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VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Reexamination of Roaming Obligations of Commercial Mobile
Radio Service Providers (WT Docket No. 05-265).

Dear Ms. Dortch:

On September 29, 2009, Joan Marsh, Jeanine Poltronieri and Terri Hoskins, of AT&T, met with members of the FCC's Wireless Telecommunications Bureau including Bureau Chief Ruth Milkman, Deputy Bureau Chief Jim Schlichting, Paul Murray, Peter Trachtenberg, Nese Guendelsberger and Susan Singer, to discuss the above-captioned proceeding. The parties discussed the state of the GSM roaming market including AT&T's roaming agreements with its GSM partners. The AT&T representatives reiterated the AT&T position that no modification of the Commission's "home roaming" rule, nor any expansion of the automatic roaming rule to include data roaming, is needed.

In addition, we are filing for inclusion in this record AT&T Reply Comments and Exhibits previously filed in WT Docket 09-66. The comments include discussion on roaming at pages 42 to 50; roaming is also included in Exhibit A, Declaration of Michael L. Katz at pages 38-40.

In accordance with Commission rules, this letter is being filed electronically with your office for inclusion in the public record.

Sincerely,



Jeanine Poltronieri

Attachments

cc:

Ruth Milkman
Jim Schlichting
Paul Murray
Peter Trachtenberg
Nese Guendelsberger
Susan Singer

....

EXHIBIT A

DECLARATION OF MICHAEL L. KATZ

MEASURING EFFECTIVE CMRS COMPETITION

Michael L. Katz

July 13, 2009

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I. INTRODUCTION AND OVERVIEW

1. As part of the process of drafting its *Fourteenth Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, the Federal Communications Commission (Commission) recently solicited data and information that would enable the Commission to evaluate the state of competition among the providers of Commercial Mobile Radio Services (CMRS).¹ As it has in its past annual notices, the Commission requested data on a broad range of economic indicators grouped into four categories that recent CMRS Competition Reports have utilized as measures of competitive conditions: (1) market structure; (2) provider conduct; (3) consumer behavior; and (4) market performance.² As part of its solicitation, the Commission also sought comment on several conceptual issues related to the assessment of CMRS competition. These issues include the definition of “effective competition” and the question of “which indicators are useful for analyzing competitive market conditions with respect to CMRS.”³ The Commission specifically invited comment on the usefulness of measures of market concentration and carrier profits as indicators of the state of competition.⁴

¹ Federal Communications Commission, “Wireless Telecommunications Bureau Seeks Comment on Commercial Mobile Radio Services Market Competition,” WT Docket No. 09-66, Public Notice, rel. May 14, 2009 (hereinafter, *Public Notice*).

² *Public Notice* at 2. See also, Thirteenth Report, *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, DA 09-54, Rel. January 16, 2009 (hereinafter *Thirteenth CMRS Competition Report*), ¶ 5.

³ *Public Notice* at 2.

⁴ *Public Notice* at 3-4, and § IV.C.

2. The Commission received a wide range of responses to its request for comments regarding the use of various indicators to determine whether there is effective competition in the provision of CMRS. I have been asked by counsel for AT&T Inc. to assess these comments from the perspective of economics.⁵ Because many of these comments do not rest on sound economic foundations, the analysis below includes a discussion of the fundamental economic principles that are relevant to the issues at hand. These principles provide a coherent framework in which to address both the initial comments and the approach that the Commission should take in measuring the degree of competition among CMRS providers.

3. I conclude that the Commission should employ an economically sophisticated approach to assessing the state of CMRS competition. The Commission should resist any temptation to search for, let alone adopt, a simplistic rule or formula (*e.g.*, a critical concentration level) to gauge competitive performance in the CMRS marketplace; such a mechanical exercise very likely would be misleading. Instead, the Commission should apply sound economic reasoning in a way that is analytically rigorous, tailored to the inquiry at hand, and cognizant of marketplace realities.

4. Briefly, an economically sound approach to measuring competition must reflect the following facts:

- *Competition takes place along multiple dimensions, and the degree of competition in any given dimension varies along a continuum.* As a general matter, suppliers rarely compete along one dimension. Instead, competition is typically multidimensional (*e.g.*, taking place in terms of both price and product quality). CMRS providers exemplify this fact. Service providers compete in terms of price levels, price structures, customer service, and the signal quality, coverage, speed,

⁵ In the interest of conserving space, I focus on particularly important or broad issues and do not address every point raised in the comments.

and reliability of their networks. They also compete along other dimensions, including the handsets, operating systems, applications, and features that they offer and promote. Moreover, wireless operators typically compete by offering a range of different products and services.

- *Competition is not a discrete, black-or-white concept.* There is no meaningful bright line between those markets that are effectively competitive and those that are not. Instead, the degree of competition lies along a continuum running from perfect competition to monopoly. Almost all markets, including those for CMRS, lie in between—rather than at—the two poles.
- *There is a critical distinction between harm to competition and harm to competitors.* It is often the case that, when a supplier takes actions that benefit consumers, the result will be to reduce the profitability of rivals suppliers, which now face a stronger competitive threat. It is widely recognized that the proper concern of competition policy is with harm to competition, not harm to the economic welfare of specific competitors.

5. These facts regarding competition have several very important implications for the measurement and assessment of CMRS competition:

- *The Commission should avoid attempting to measure competition as if it were a uni-dimensional concept.* Given the multi-dimensional nature of competition, uni-dimensional measures of market conduct are likely to provide an incomplete and potentially misleading view of CMRS competition. Similarly, in evaluating the consumer-welfare effects of various practices, the Commission must consider the full range of effects. For example, as discussed below, exclusive arrangements between wireless service providers and handset manufacturers play an important role in promoting handset innovation and competition.
- *The Commission should reject mechanical reliance on arbitrary concentration thresholds.* The degree of competition runs along a continuum. Hence, even if concentration indexes perfectly measured competition, there would not be a sound basis for adopting a bright-line threshold. Moreover, the linkage between concentration measures and competition is complex and far from perfect. Consequently, there is no “magic” degree of concentration that separates competitive from uncompetitive markets. Although some commenters take the position that there exists a critical level of concentration, there is no economic basis for concluding that there is a discrete break in provider behavior at any particular concentration level. As explained below, commenters favoring the use of this bright line have a mistaken understanding of its limited role in merger analysis merely as a trigger for further inquiry. A variety of factors other than concentration are relevant to any rigorous analysis of competition, including the ease with which consumers can switch among providers and the underlying drivers of market shares.

- *The Commission should avoid reaching the false conclusion that an increase in concentration is indicative of market failure or a breakdown of competition.* Several commenters have asserted that concentration in CMRS markets is increasing and that this increase indicates some sort of market failure. However, a proper economic analysis recognizes that implications of any increase in concentration can properly be understood only by analyzing the underlying drivers of that increase. For example, the implications for competition are very different when a market is concentrated because one service provider has developed an innovative offering that is extremely attractive to consumers than when the market is concentrated because the government artificially restricted the entry of some service providers. In the first instance, the increase in concentration is actually the consequence of vigorous competition. This example is not unique; as discussed below, there are other situations in which an increase in the degree of competition leads to increased concentration.
- *The profit metrics proposed in the Public Notice are poor indicators of the degree of competition in the provision of CMRS.* This conclusion follows from several facts:
 - *It is well-recognized among economists that accounting measures of profitability are ill-suited for gauging competitive intensity.* There are several well-known ways in which accounting profits diverge from economic profits. This divergence is a serious issue because economic profits are the measure relevant to the assessment of market performance.
 - *The calculation of profits for a particular service is particularly difficult when that service is offered by a multiproduct provider.* Assessing the profitability of a single product of a multi-product firm can require reverse engineering various overhead measures and other cost allocations that have been made within the firm. Such reverse engineering is potentially subject to significant error and the required regulatory cost allocations may be inherently arbitrary.
 - *The calculation of economic profits must take into account the risk-adjusted rate of return.* A competitive rate of return for an investment accounts for the riskiness of that investment, with riskier projects corresponding to higher competitive rates of return. Hence, what appear to be high profits may merely be the competitive reward for past risk-taking.
 - *Even if it were possible to estimate economic profits accurately, the existence of positive economic profits does not indicate that competition is ineffective or that regulatory intervention is warranted.* It is necessary to account for both the stochastic nature of competitive outcomes and the costs and limitation of governmental intervention. With respect to the stochastic nature of outcomes, high *ex post* levels of profit are consistent with low *ex ante* or expected levels of profit, which are what drive investment decisions.

- *It is also well-recognized that the Lerner Index is of substantially limited utility as a competition metric in network industries characterized by significant ongoing investment and high fixed costs. Marginal cost pricing is not a realistic benchmark in an industry that requires ongoing investment and has significant economies of scale and/or density—a supplier pricing at marginal cost would be unable to cover its overall costs and, consequently, would not be financially viable. In the presence of sunk investments and economies of scale and density, “high” margins are consistent with competitive behavior.*
- *In several instances, commenters assert that certain elements of CMRS provider conduct are indicative of ineffective competition when, in fact, this conduct is fully consistent with effective competition:*
 - Some commenters contend that the existence of exclusive distribution arrangements between carriers and handset makers demonstrates the absence of effective competition and the existence of market power. However, as I have explained elsewhere, such arrangements support investment and innovation, and are an important form of competition in the wireless industry.⁶ These commenters apparently are making the mistake of equating harm to specific competitors’ commercial interests with harm to competition. The proper focus of pro-consumer public policy is on harm to competition.
 - Similarly, commenters who contend that early termination fees are both a cause and consequence of market power ignore: (a) the fact that early termination fees support handset subsidies that many consumers find highly desirable, (b) economic scholarship showing that early termination fees can intensify competition to attract new customers.
 - One commenter incorrectly asserts that carriers engage in parallel pricing and that such pricing is indicative of collusion. This claim lacks either an empirical or theoretical basis. First, empirical data indicate that carriers do not engage in parallel pricing. This is so for two reasons. One, the prices themselves are not equal and do not move in lock step. Second, wireless operators offer multi-dimensional services that vary across carriers. Hence, even if nominal prices were the same across carriers, the quality-adjusted prices would not be. Turning to economic theory, it has long been recognized that, in equilibrium, perfectly competitive firms will all charge the same price as one another. Hence, it is simply false to assert that evidence of parallel

⁶ Michael L. Katz, “An Economic Analysis of the Rural Cellular Association’s Petition for Rulemaking Regarding Exclusivity Arrangements between Commercial Wireless Carriers and Handset Manufacturers,” February 2, 2009, attached as an exhibit to Comments of AT&T Inc., *In the Matter of Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers*, RM-11497, February 2, 2009.

pricing (if it existed) would establish that service providers were engaged in a collective exercise of market power.

- Some commenters point to individual carrier decisions to limit the use of or in other ways not support particular wireless applications as evidence of a lack of competition. However, these commenters offer incomplete and, thus, misleading characterizations of the situations.
- Lastly, two commenters assert that the pricing of special access distorts CMRS competition. These commenters fail to recognize the concept of opportunity cost, which tends to level the playing field between wireless providers that are and are not integrated into the provision of special access services. Moreover, these commenters confuse statements about the level of an input price with statements about the degree of competition in the output market.
- *“Effective competition” is not equivalent to “perfect competition,” and it would not promote consumer welfare for the Commission to regulate a market simply because it was not perfectly competitive.* Although markets are rarely perfectly competitive, they often are sufficiently competitive to render unnecessary extensive government intervention. Moreover, even in imperfectly competitive markets, governmental intervention may engender more consumer harm than consumer benefit. This is so because regulation imposes administrative costs on public and private entities and inevitably has unintended adverse consequences.
- *The best approach for assessing whether there is effective competition in the provision of CMRS is to continue examining a wide range of factors and to recognize that regulation is not warranted unless there is substantial evidence of significant market failure.* The Commission’s historical consideration of market performance and conduct indicators has provided useful insights into whether competition among service providers is succeeding in advancing consumer welfare through the expansion of service offerings, the development and promotion of innovative technologies, and the lowering of prices. For the better part of the past decade, those indicators have been consistent with an effectively competitive wireless industry. In its most recent study of CMRS competition, the Commission reported that 94 percent of all United States consumers had access to four or more wireless competitors. Output, prices, data speeds, broadband coverage, quality, and investment all continue to exhibit positive trends. And innovation is occurring at a significant pace as providers compete to offer new wireless features, functionalities, devices and applications.

6. The remainder of this report explains these conclusions in greater depth and provides details of the facts and analysis supporting them.

II. COMPETITION

7. Congress has established CMRS competition as a fundamental public policy goal.⁷ Numerous public policies, including antitrust enforcement and the Telecommunications Act of 1996, promote competition for the benefits it delivers to consumers.⁸ These benefits typically arrive in the form of lower prices, greater innovation and variety, and/or improved product and service quality. The Commission’s policies are intended to serve and advance the public interest, which is a broader concept than are competition and efficiency. However, promoting efficiency through competition is widely recognized as the most effective means in most markets to promote overall consumer welfare. In the presence of vigorous competition, the practical role for government to improve efficiency and the economic welfare of consumers is quite limited except in certain well-defined circumstances.

A. COMPETITION IS A MULTI-DIMENSIONAL CONCEPT THAT OCCURS ALONG A CONTINUUM

8. In economics, competition generally refers to rivalry among participants on one side of a market to attract partners from the other side for some form of economic exchange. Economists also study whether a market is “competitive,” which broadly construed connotes a significant degree of rivalry on both the supply side and the demand side of the market.

⁷ The Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b), amending the Communications Act of 1934 and codified at 47 U.S.C. § 332(c). Under this statute, the Commission is charged with analyzing, on an annual basis, market conditions in CMRS and reporting (among other things) whether there is “effective competition” in CMRS.

⁸ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). The 1996 Act amends the Communications Act of 1934, 47 U.S.C. §§ 151 *et. seq.*

9. There exists a set of conditions that gives rise to a formal model that economists call “perfect competition.” Among other things, these conditions include sufficiently many buyers and sellers so that no individual consumer or supplier can affect price, and the easy entry and exit of suppliers. In perfectly competitive markets where these conditions are satisfied, economic welfare (as measured by total surplus) is maximized.

9. The textbook model of monopoly lies at the other end of the competition continuum. Under monopoly, there is a single supplier, which faces no competition and which can affect market price through its choice of output level. In the textbook model of monopoly, economic welfare is not maximized.⁹

10. It is widely understood that most real-world markets do not satisfy the conditions of the formal models of either perfect competition or monopoly. Instead, the degree of competition runs along a continuum with perfect competition at one end, monopoly at the other, and most real-world markets somewhere in between.¹⁰ Suppliers in these imperfectly competitive markets have the ability to affect prices through their actions but also face competition. Moreover, the degree of competition depends on many factors; the number of suppliers is only one of them.

11. The nature of the technological relationship between output and costs is one of the primary reasons that real-world markets do not attain the atomistic structure of the theoretical

⁹ Monopoly may nonetheless be the most efficient practical way to organize some markets, such as those characterized by very significant economies of scale.

¹⁰ Although the linear metaphor is useful, it is important to recognize that intermediate market conditions can give rise to market conduct that is not exhibited by either monopoly or perfect competition.

model of perfect competition. Specifically, producers in real-world markets—including CMRS providers—often utilize production, distribution, or other technologies characterized by economies of scale, density, and scope. In the presence of economies of scale and density, it is economically inefficient and unlikely to be commercially viable to have a large number of suppliers, each operating at a small scale or low density. In such markets, it is a mistake to seek or expect to have a large number of suppliers and/or to have suppliers set prices equal to marginal costs (as would perfect competitors). Similarly, in the presence of economies of scope, there are typically common costs that need to be recovered through the pricing of the full set of products, and the price-cost margin earned on a single product indicates little about the supplier's overall degree of cost recovery.

12. It is also important to recognize that the manner in which firms compete is typically much more complex than in the textbook model. Competition is rarely a uni-dimensional concept. Instead, competition is typically multidimensional. CMRS markets provide vivid illustrations of this point. Service providers compete in terms of the levels and structures of their prices, their customer service, and the signal quality, coverage, speed, and reliability of their networks. Wireless service providers also compete along other dimensions including the handsets, operating systems, applications, and features that they offer and promote.

13. Uni-dimensional measures of market conduct are thus likely to provide an incomplete and misleading view of CMRS competition. In the most extreme cases, some commenters focus on the price of a single service offering to the exclusion of substitute service offerings available from the *same* carriers and without regard to the need to cover fixed and common

costs that are spread across multiple services.¹¹ Similarly, in evaluating the consumer-welfare effects of various practices, the Commission must consider the full range of effects. For example, as discussed below, exclusive arrangements between wireless service providers and handset manufacturers play an important role in promoting handset innovation and competition.

B. THERE IS A CRITICAL DISTINCTION BETWEEN HARM TO COMPETITION AND HARM TO COMPETITORS

14. In examining whether there is possible harm to competition, it is vital to recognize a fundamental distinction. As noted above, antitrust enforcement and modern telecommunications regulation are designed to protect competition because of the benefits that competition brings to consumers. It is important to recognize that there is a critical difference between protecting the competitive process and protecting individual competitors from the rigors of the marketplace. Or, as is commonly stated, the concern of competition policy is with harm to competition, not harm to competitors.

15. The following hypothetical example makes clear why this distinction is so important. When a supplier invests in innovative, proprietary network features that are extremely attractive to consumers, the introduction of those features harms competitors. But the innovation benefits consumers and is, indeed, a benefit of the competitive process in action. A pro-consumer public policy would properly favor innovation and seek to protect competition. In contrast, a pro-competitor public policy might block the introduction of innovative network features. Alternatively, a pro-competitor policy might require that any

¹¹ *CFA Comments* at 10.

such innovation be shared with rivals, thus greatly weakening or even destroying innovation incentives. In either case, a policy that sought to protect competitors would harm competition and consumer welfare.

III. A SOUND ANALYSIS OF COMPETITION MUST LOOK BEYOND THE APPLICATION OF NUMERICAL CONCENTRATION THRESHOLDS

16. Although widely used in the analysis of competition, measures of concentration suffer from several drawbacks that limit their usefulness or invalidate them as stand-alone indicators of competition. Because of these drawbacks, a full analysis of competition requires the examination of a range of structural and non-structural market characteristics, rather than a mechanical focus on a specific concentration threshold.

A. SHORTCOMINGS OF CONCENTRATION INDICES AS MEASURES OF COMPETITION

17. There are several problems that can arise from an excessive reliance on concentration calculations. First, such measures are necessarily based on the definition of the underlying relevant market, and problems in properly defining markets therefore impact the usefulness of the resulting concentration measures. Because market definition in both the product and geographic dimensions depends on judgments about the degree to which certain products are substitutable for other products, market boundaries often cannot be drawn with absolute precision.¹² Because measures of concentration may be based on flawed market boundaries,

¹² The problem is not just that it is difficult to know which products have sufficient substitutability to be in the market but also that the market definition exercise creates sharp demarcations between products inside and outside of the relevant market. Measures of concentration are based only on products inside the market and discard products outside the market; in other words, such measures set to zero the competitive impact of products outside the market. It is erroneous to conclude, however, that all products outside of the relevant market boundaries fail to exert any price discipline on the products inside of the relevant

those measures should be treated with caution. Although they may be easy to calculate (once a market is chosen), ease of calculation alone does not make them valuable or accurate.

18. Second, there is no single measure of concentration that is relevant in all situations, *i.e.*, there is no single measure that accurately relates to the degree of competition in all markets. For example, there are multiple metrics upon which to base concentration calculations (*e.g.*, traffic volume, capacity, or subscribers), and different measures may lead to different conclusions if one adopts a bright-line test based on concentration. There are also significant questions concerning the use of concentration measures based on customer flows (*e.g.*, the percentage of new or shifting customers that a CMRS provider attracts in a given

market boundaries. See, *e.g.*, Statement of the Federal Trade Commission concerning Royal Caribbean Cruises, Ltd./P&O Princess Cruises plc and Carnival Corporation/P&O Princess Cruises plc, FTC File No. 021 0041 (limiting the relevant product market to “cruising” despite evidence that cruise ship operators view land-based vacation options as serious competitive threats, but including the constraining influence of land-based vacations in the overarching assessment of the likely competitive effects of the merger).

For a discussion of conditions under which the product market definition exercise is inherently arbitrary and thus might generate misleading conclusions regarding the state of competition, see Joseph Farrell and Carl Shapiro, “Antitrust Evaluation of Horizontal Mergers: An Economic Alternative to Market Definition,” November 25, 2008, at 5 and 6 (*available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1313782); Dennis W. Carlton, “Market Definition: Use and Abuse,” *Competition Policy International*, Spring 2007, at 3-4.

Similar issues arise with respect to geographic market definition. Specifically, even if one defines local markets based on the consumer-substitution methodology, there are central elements of consumer preferences and service provider competitive strategies that create national linkages. An important characteristic of CMRS is that the service providers have fixed locations, but the majority of their customers make use of the services on a mobile basis and desire to make use of CMRS services in a range of locations. Consequently, various consumers are interested in a CMRS provider’s service coverage area on a local, regional, national, or even international basis. This interest gives rise to both local and national elements of competition. In addition, many CMRS providers deploy pricing and marketing strategies on a nationwide basis in order to economize on customer service and media costs. Consequently, conducting a competitive analysis solely at a local level would be misleading. Thus, here again the Commission should exercise caution in assigning too much weight to specific geographic market boundaries and the resulting market shares.

time period) versus stocks (*e.g.*, market shares measured in terms of installed bases of customers). And finally, there are multiple ways to combine market share data into scalar measures of concentration (*e.g.*, the family of C - n measures¹³ and the Herfindahl-Hirschman Index (HHI)¹⁴).

19. Third, in markets for new or rapidly changing products, market shares and concentration can change rapidly. Hence, in such markets, shares today may provide little insight into the competitive conditions of next year. For this reason, caution is especially needed with respect to the use of market shares as a measure of competitive conditions in the supply of wireless broadband services.

20. Fourth, and perhaps most important in the present context, as a matter of economics, there is no catch-all theory that relates the strength and nature of competition to market shares and concentration, or to changes in concentration. Levels and trends in concentration have to be interpreted carefully based on the underlying drivers of those levels and trends. For example, an increase in concentration could result from a quality change that induces consumers to shift to an improved product. Suppose, for instance, that an airline institutes non-stop service between two cities where previously all airlines offered only connecting service. The nonstop airline would very likely take a large share of the market, which would increase market concentration. This increased concentration does not indicate that the market

¹³ The C - n measure is calculated by summing the market shares of the n largest suppliers in a market.

¹⁴ The Herfindahl-Hirschman Index is calculated by summing the squares of the market shares of all individual suppliers in a market.

is less competitive; in fact, consumers have benefitted from the addition of higher-quality service.¹⁵ The increase in concentration reflects improved quality, not lessened competition.

21. As another example, an increase in concentration could result from a shift in the nature of costs in the industry. If economies of scale or density increase, *e.g.*, the minimum efficient scale increases, so that small firms have a greater cost disadvantage than before, then small firms are likely to be driven from the market and concentration will rise. Rather than indicate a competitive problem, increased concentration would in this case result from the competitive process that drives small, inefficient firms from the market as economies of scale and density increase. Such an increase in concentration would indicate an efficient market response to changed cost conditions and would not indicate a competitive problem that requires regulatory attention.

22. Finally, an increase in concentration may actually reflect an increase in the strength of competition. If suppliers do not compete vigorously and, instead, hold prices above competitive levels, then inefficient suppliers can remain in the market even with relatively high costs. As suppliers compete more strongly and lower the price umbrella under which inefficient firms had prospered, those high-cost firms will be driven to exit the market and concentration levels will increase. Thus again, an increase in concentration can result from increased competition rather than indicating the lack of competition.

¹⁵ Consumers who actually shift airlines clearly benefit from the higher-quality product directly. It is important to recognize that even those consumers who do not shift airlines still may benefit from the entry; other providers might respond by improving their service or lowering their prices to retain customers.

23. Attempts to apply a one-size-fits-all approach to analysis of market shares and concentration will lead to serious mistakes in an economic environment as complex as that of the CMRS industry. For example, although a wireless market with three or even five facilities-based providers may yield HHI concentration figures that reside in the “highly concentrated” category of the *Merger Guidelines*, it would be a mistake simply to assume that the market in question is not effectively competitive. Rather, sound economics mandates an analytical approach that is consistent with the Commission’s current methodology—an examination of whether competition among service providers has succeeded in advancing consumer welfare through the expansion of service offerings, the development and promotion of innovative technologies, and lower prices. Similarly, it would be a mistake to ignore the competitive realities of the market, including a provider’s minimum efficient scale of operation, and simply assume, based upon a concentration measure, that a more efficient structure is feasible.

24. Several commenters rely upon concentration thresholds stated in the *Horizontal Merger Guidelines*¹⁶ to argue that the wireless industry is not competitive. For example, CFA *et al.* contend that “any [Herfindahl-Hirschman measure of concentration] above 1800 in an individual economic area (‘EA’) indicates severely limited competition under traditional analyses.”¹⁷ As I will now discuss, this mechanical reliance on the stated thresholds using a

¹⁶ U.S. Department of Justice and the Federal Trade Commission, *Horizontal Merger Guidelines*, April 2, 1992 (revised April 8, 1997), *available at* <http://www.ftc.gov/bc/docs/horizmer.htm> (hereinafter, *Horizontal Merger Guidelines*), § 1.51.

¹⁷ Comments of Consumer Federation of America, Consumers Union, Free Press, Media Access Project, New America Foundation, and Public Knowledge, *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT

single measure in an attempt to establish that the wireless industry is uncompetitive is misguided. CFA *et al.*'s claim is incorrect both as a statement about process and about economics. With respect to process, the *Horizontal Merger Guidelines* establish HHI thresholds as a trigger mechanism for further inquiry, not as a hard and fast test of when a market is competitive and when it is not.¹⁸ Moreover, the *Guidelines* downplay the significance of the stated thresholds: "Although the resulting regions provide a useful framework for merger analysis, the numerical divisions suggest greater precision than is possible with the available economic tools and information."¹⁹ As stated by a Department of Justice official, "the outcome of our merger review does not hinge on HHI calculations or any other objective or readily observable benchmark."²⁰ Consideration of factors beyond a simple HHI calculation is needed to determine whether a merger would likely be anti-competitive.

25. Evidence demonstrates that the antitrust agencies clear mergers even where the HHIs are far in excess of the "highly concentrated" threshold. A study of mergers reviewed but not challenged by the FTC between 1996 and 2003 showed that the mean HHI was in excess of

Docket No. 09-66, June 15, 2009 (hereinafter, *CFA Comments*), at 5. See also, Comments of MetroPCS Communications, Inc., *In the Matter of Wireless Telecommunications Bureau Seeks Comment on Commercial Mobile Radio Services Market Competition*, WT Docket No. 09-66, June 15, 2009 (hereinafter *MetroPCS Comments*) at 5.

¹⁸ *Horizontal Merger Guidelines*, § 2.0.

¹⁹ *Horizontal Merger Guidelines*, § 1.5.

²⁰ David L. Meyer, Deputy Assistant Attorney General for Civil Enforcement, "Merger Enforcement Is Alive and Well at the Department of Justice," Remarks at the ABA Fall Antitrust Section Forum, November 15, 2007, *available at* <http://www.usdoj.gov/atr/public/speeches/227713.htm>, *site visited* July 1, 2009. Interestingly, Mr. Meyer describes some markets as "relatively unconcentrated," even though those markets had HHIs well in excess of 1800.

3000.²¹ A high-ranking Department of Justice official observed that “the transactions we did not challenge fell across the full spectrum of concentration: from those that had little effect on concentration in unconcentrated markets to those that may have appeared to increase it substantially in relatively concentrated markets.”²²

26. CFA *et al.* asserted that, if CMRS offerings are competitively supplied, then local CMRS markets should be more concentrated (*i.e.* have higher HHIs) in rural areas than in urban areas and that the observed pattern whereby CMRS is both the most and least concentrated in rural areas indicates competition has been distorted.²³ This is an unsound claim. These commenters are correct that consumers are more sparse in rural areas than urban, so that—in the presence of economies of density—one would expect fewer service providers and greater concentration in rural areas. However, there is more to the story, and the claim regarding the implications for competition is unwarranted. For instance, national wireless service providers have been expanding into rural areas and can find themselves competing with incumbent carriers that specialize in serving rural areas.²⁴ Hence, it is not surprising that there may be some rural areas with more providers and lower HHIs than some

²¹ Malcolm B. Coate and Shawn W. Ulrick, “Transparency At The Federal Trade Commission: The Horizontal Merger Review Process 1996-2003,” February 2005, *available at* <http://www.ftc.gov/os/2005/02/0502economicissues.pdf>, *site visited* July 1, 2009, Table 1.

²² David L. Meyer, Deputy Assistant Attorney General for Civil Enforcement, “Merger Enforcement Is Alive and Well at the Department of Justice,” Remarks at the ABA Fall Antitrust Section Forum, November 15, 2007, *available at* <http://www.usdoj.gov/atr/public/speeches/227713.htm>, *site visited* July 1, 2009.

²³ CFA *Comments* at 5.

²⁴ In this regard, it is interesting to note that national carriers’ practice of entering into exclusive distribution agreements for certain handsets may benefit rural consumers because the arrangements can provide competitive advantages that allow national carriers to expand into rural areas and bring more competition to those areas.

urban areas. And it is certainly not proof that there is a problem with competition in the wireless marketplace.

B. A COMPLETE ASSESSMENT OF MARKET STRUCTURE MUST LOOK BEYOND CONCENTRATION MEASURES

27. Even if one has a coherent theory of why market shares and concentration are informative measures of competition and market power, the analysis of competition is not complete. As the *Horizontal Merger Guidelines* recognize, “market share and concentration data provide only the starting point for analyzing the competitive impact of a merger.”²⁵ A similar conclusion holds for the use of market share and concentration data to assess competition in other settings as well.

28. A complete competitive analysis must look beyond market share data and measures of concentration to examine additional structural characteristics (*e.g.*, the conditions of entry).²⁶ In CMRS markets, for example, rapidly changing prices due to substantial innovation and investment, as well as the multi-dimensional nature of service offerings (*e.g.*, “free” minutes, peak and off-peak prices, roaming charges, handset subsidies, and vertical services), create conditions that promote competition rather than coordinated pricing.

29. The Commission has for many years employed a broad range of actual market metrics to study rivalry among CMRS providers and the consequent consumer benefits. The indicators are divided into four different types²⁷: (1) market structure (the current level of

²⁵ *Horizontal Merger Guidelines*, § 2.0.

²⁶ In a merger context, see *Horizontal Merger Guidelines*, §§ 2 and 3.

²⁷ This particular grouping of the indicators began with the Ninth CMRS Competition Report, but the indicators had been used prior to that report. (Ninth Report, *In the Matter of*

concentration and ease of entry²⁸); (2) provider conduct (rivalry in price, network technology, quality, and other aspects of competition²⁹); (3) consumer behavior (access to information and churn³⁰); and (4) market performance (prices, subscribership, minutes of use, innovation, and quality of service³¹). These metrics are well-accepted among economists as highly pertinent to an assessment of competition. Moreover, commenters have provided no substantial evidence that the Commission's longstanding use of these market metrics to assess CMRS competition is inappropriate or flawed. In contrast, were the Commission to adopt an abbreviated methodology that leaned more heavily on measures of market shares and concentration, it would run the considerable risk of producing distorted views of competitive performance that incorrectly suggested a need for regulatory intervention.

30. The dangers associated with over-reliance on concentration thresholds and the concomitant need to utilize additional market metrics are particularly great when examining competition in the provision of wireless broadband data services.³² Because mobile broadband is in a nascent stage of development and poised for significant innovation, growth, and expansion going forward, a static examination of market shares and concentration may be

Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, FCC 04-216, rel. September 28, 2004, (hereinafter, *Ninth CMRS Competition Report*), ¶ 6.)

²⁸ *Ninth CMRS Competition Report*, Section III.

²⁹ *Ninth CMRS Competition Report*, Section IV.

³⁰ *Ninth CMRS Competition Report*, Section V.

³¹ *Ninth CMRS Competition Report*, Section VI.

³² For the Fourteenth Report, the Commission has requested data from wireless broadband providers on the census tracts to which they provide wireless high-speed Internet service. (*Public Notice* at 4-5.)

of little value in determining whether the provision of mobile broadband services is effectively competitive.

IV. THE COMMISSION’S PROPOSED FINANCIAL INDICIA ARE FLAWED MEASURES OF CMRS COMPETITION

31. The Commission seeks comment on whether one or more accounting measures of carrier profitability should inform the assessment of whether there is effective competition in the provision of CMRS.³³ The Commission suggests several different measures of accounting profitability, including the return on equity or assets, and earnings per share. Similarly, the Commission proposes the use of the Lerner Index as a possibly informative indicator.³⁴ The Commission asks “which of these methods is the most appropriate for analyzing the profitability of wireless telecommunications firms and providing insight into whether there is effective competition.”³⁵ CFA *et al.* view these profit measures favorably.³⁶ As discussed in the remainder of this section, however, all of the proposed metrics should be rejected because they are not good proxies for the state of competition in the CMRS marketplace.

32. The Commission’s proposed accounting measures of profitability are: net profit ratio, operating profit ratio, return on assets, return on equity, earnings per share, and cash flow margin.³⁷ Although the Commission recognizes the distinction between accounting and

³³ Specifically, the Commission seeks comment on “the use of profitability estimates as a tool in our analysis of the performance of the CMRS industry, including to what extent profit levels are evidence of effective competition.” (*Public Notice* at 12.)

³⁴ *Public Notice* at 12.

³⁵ *Public Notice* at 12.

³⁶ *CFA Comments* at 20.

³⁷ *Public Notice* at 12.

economic profits and appears to seek to measure economic profits (*i.e.*, “revenue minus all costs, including all opportunity costs”) all of these proposed measures are explicitly based upon accounting concepts.³⁸ Furthermore, the Commission proposes to use accounting data provided in SEC-mandated company filings as its source of data. Both the measures listed and the data the Commission proposed to use make it very unlikely that the Commission could derive meaningful measures of economic profits.

32. The economics literature has long recognized the problems inherent in trying to infer economic profits from accounting measures of profits.³⁹

33. One such problem is that asset valuation from an accounting perspective does not necessarily correspond to asset valuation from an economic perspective.⁴⁰ Consequently, the accounting treatment of capital investment often yields results that have little economic meaning. The accounting treatment of intangible assets, such as research and development, advertising, and elements of service that foster the creation and development of positive reputations, is particularly problematic. Accounting conventions do not properly measure the underlying economic values of these assets, and consequently accounting profits are an unreliable proxy for economic profits.⁴¹

³⁸ *Public Notice* at 12.

³⁹ See, *e.g.*, Franklin M. Fisher and John J. McGowan (1983), “On the Misuse of Accounting Rates of Return to Infer Monopoly Profits,” *American Economic Review*, **73**:1(82-97).

⁴⁰ For an overview of this problem, see Franklin M. Fisher (1988), “Accounting Data and the Economic Performance of Firms,” *Journal of Accounting and Public Policy*, **7**(253-260).

⁴¹ For example, according to FASB rules, research and development (R&D) is treated as a current expense. (Financial Accounting Standards Board, “Original Pronouncements as Amended, Statement of Financial Accounting Standards No. 2, Accounting for Research and Development Costs,” issued October 1974, *available at* <http://www.fasb.org/cs/BlobServer?blobcol=urldata&blobtable=MungoBlobs&blobkey=id&b>

34. A second problem in trying to infer economic profits from accounting profits relates to the fact that the returns to most investments are highly uncertain. This uncertainty makes it essential to adjust the cost of capital to account for the degree of risk associated with the investment when calculating economic profits. In practice, proper adjustment for risk can be very difficult, and the failure to account properly for investment risk will yield inaccurate estimates of economic profits. This problem in attempting to use a profit measure to determine whether a service provider has market power is closely related to the problem that arises because regulators observe realized project returns, not the expected returns at the time the service provider made its investment decisions. The following example illustrates the importance of this distinction. Consider a potential project that requires a \$1 million investment this year and has a 50-percent chance of success next year. In the event of success, the project yields \$2 million in additional revenues, while failure leads to no new revenues. In this case, the undiscounted expected value of the project is \$0 and the discounted expected return is negative for any positive interest rate (*i.e.*, accounting for risk and the time value of money). Suppose that the firm nonetheless undertook the project and was successful. It clearly would be a mistake to conclude from the fact that the firm was earning a net return of \$1 million (\$2 million minus the \$1 million investment) that it was somehow earning excess profits as the result of market power. Such a calculation would completely fail to account for the fact that the firm had only a 50 percent chance of

lobwhere=1175818779322&blobheader=application%2Fpdf , *site visited* July 12, 2009), ¶ 12. However, proper economic analysis regards a significant portion of R&D as a capital investment because it (potentially) produces assets that yield a future stream of profits. Because of this divergence between accounting definitions and economic concepts, accounting

succeeding. The existence of such “profits” would not indicate that the supplier had market power; rather, it would illustrate the fact that using *ex post* profits to measure market power may lead to erroneous conclusions.

35. Economies of scope make it socially efficient and commercially profitable for suppliers to become multi-product firms. Consequently, CMRS providers typically offer multiple services that largely—but not completely—rely on common network facilities. This fact raises complex issues about the sharing of common costs across different services, which makes the calculation of profits for an individual service particularly difficult. Assessing the profitability of a single product of a multi-product firm can require reverse engineering various overhead measures and other cost allocations that have been made within the firm. Such reverse engineering is potentially subject to significant error and regulatory cost allocation may be inherently arbitrary.

36. Conclusions regarding CMRS competition drawn from accounting profit measures are apt to be unreliable, and policy interventions based on those conclusions may result in harm to the very consumers that well-intentioned regulators seek to protect. For these reasons, the U.S. antitrust agencies generally do not focus on accounting measures of profitability to assess the degree of competition. Rather, these agencies, as has the Commission in its examination of competition in CMRS, tend first to assess the structure of the market and then evaluate the conduct of suppliers, consumer behavior, and market performance.

profits (which are net of current R&D costs) can be higher or lower than economic profits, depending on the timing of R&D expenditures and the realization of the benefits of that R&D.

37. As is the case for accounting measures of profitability, the Commission should reject the Lerner Index as an informative metric of competition in the provision of CMRS. The Lerner Index is calculated as the difference between price and marginal cost, expressed as a percentage of price. The Lerner Index ranges between zero and 100 percent. Under certain conditions, higher values of the Lerner Index are associated with greater degrees of supplier market power. It is well-accepted among economists, however, that the Lerner Index can be subject to serious misinterpretation in a marketplace such as CMRS that is characterized by significant fixed costs and scale economies. In such a setting, market participants must set prices above marginal cost—perhaps substantially so—in order to cover fixed costs. Requiring firms to price at or near marginal cost in order to be considered competitive would set the wrong standard.⁴² In an industry with economies of scale, firms pricing at marginal cost would suffer economic losses and would not be commercially viable. Indeed, in the presence of economies of scale, a firm could have a Lerner Index of 70 percent, 80 percent, or more and still be suffering economic losses. In addition, as discussed earlier in this section, the cost allocation issues that arise when suppliers offer multiple products subject to economies of scope apply with equal force to the calculation of an individual service’s Lerner Index. For these reasons, the Lerner Index can be a very poor indicator of economic profits.⁴³

38. Thus far, the discussion has focused on the extent to which various approaches fail to measure economic profits accurately. It should be recognized that, even if it were possible to

⁴² Such a standard would correspond to a Lerner Index at the low end of the 0-to-100 percent range.

estimate accurately economic profits, effectively competitive markets do not necessarily imply modest economic profits for all market participants. Indeed, high economic profits for some suppliers can be consistent with highly competitive markets.⁴⁴ Hence, it is impossible, without more information, to infer from the degree of profits the degree of competition in a market.

39. Lastly, if—despite the many problems just identified—the Commission adopts some or all of these profitability measures as proxies for the exercise of market power, then it will have to confront the following implication of this approach: by this method, MetroPCS is exercising as much or more market power than any of the four largest national wireless carriers, and Leap Wireless is exercising as much or more market power as three of the four largest national wireless carriers.⁴⁵

⁴³ Use of the Lerner Index is complicated further by the difficulties associated with accurately measuring a wireless provider's marginal cost given consumer mobility and the nature of network provision.

⁴⁴ For example, firms can achieve high profits through innovation and other forms of successful, but risky, investments. Indeed, for all firms, it is the prospect of higher profits that creates the incentives to invest in innovation and greater efficiency.

⁴⁵ MetroPCS recently estimated, based on publicly available data, that: its core markets cash profit margin per user was higher than that of any of the four national carriers; its core markets adjusted EBITDA margin was as high as that of any of the four largest carriers; and Leap Wireless's adjusted EBITDA margins were as large or larger than those of three of the four national carriers. (MetroPCS, *Raymond James Investor Conference*, March 9, 2009, available at http://library.corporate-ir.net/library/17/177/177745/items/328122/F5EE0514-D8F3-4946-94EC-54A9C6BC0746_090306_InvestorSlides_RayJay_Final_PCS.pdf, site visited July 11, 2009, at 4 and 9.)

V. SEVERAL COMMENTERS MISCONSTRUE THE COMPETITIVE IMPLICATIONS OF MARKET CONDUCT

40. In several instances, commenters assert that certain elements of CMRS provider conduct are indicative of a lack of effective competition when, in fact, this conduct is fully consistent with effective competition. Consider several examples.

A. EXCLUSIVE DISTRIBUTION ARRANGEMENTS

41. Some commenters contend that the existence of exclusive distribution arrangements between carriers and handset makers demonstrates the absence of effective competition and the existence of market power.⁴⁶ However, as I have explained elsewhere, it is widely accepted in legal, public policy, and economic analysis that exclusive contracts frequently promote competition and consumer welfare.⁴⁷ Exclusivity arrangements can promote competition and increase incentives for suppliers to engage in: (a) facilities investment and innovation, and (b) customer service and promotional activities. These effects arise because exclusive contracts provide a means for parties to commit to dealing with one another and, thus, such contracts can increase the incentives for the parties to invest in their economic relationship.⁴⁸ For this reason, exclusivity arrangements are common in many competitive

⁴⁶ Comments of Cellular South, Inc., *In re: Wireless Telecommunications Bureau Seeks Comment on Commercial Mobile Radio Services Market Competition*, WT Docket No. 09-66, June 15, 2009 (hereinafter *Cellular South Comments*) at 9-10; *MetroPCS Comments* at 9-10.

⁴⁷ Michael L. Katz, “An Economic Analysis of the Rural Cellular Association’s Petition for Rulemaking Regarding Exclusivity Arrangements between Commercial Wireless Carriers and Handset Manufacturers,” February 2, 2009, attached as an exhibit to Comments of AT&T Inc., *In the Matter of Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers*, RM-11497, February 2, 2009 (hereinafter *Katz Exclusivity Analysis*).

⁴⁸ Moreover, even if one ignores the investment benefits of exclusive contracting, economic research shows that the bundling of wireless services and handsets can result in lower prices to

markets (*e.g.*, a department store may have a contract with a clothing manufacturer to be the exclusive distributor of a certain line of clothes).

42. With respect to the specific markets under consideration, the evidence indicates that use of exclusive contracts between wireless carriers and handset manufacturers promotes competition and benefits consumers in wireless communications markets. First, the introduction of exclusive handsets is an important form of competition in this industry. Manufacturers and carriers work together to create innovative new products that allow them to gain (typically temporary) competitive advantages over their rivals. Innovation by one manufacturer-carrier pair creates competitive pressure for other manufacturers and carriers to meet or beat that innovation. Second, exclusive deals between handset manufacturers and wireless carriers strengthen carriers' incentives to make network investments in support of innovative new handset features and functions, to promote new handsets, and to provide customer support for those handsets.⁴⁹

43. Although economic theory has identified circumstances in which exclusive arrangements can harm competition and consumers by excluding competitors, those

consumers. (Joseph Farrell, Hunter K. Monroe, and Garth Saloner (1998), "The Vertical Organization of Industry: Systems Competition versus Component Competition," *Journal of Economics and Management Strategy*, 7(2):143-182.)

⁴⁹ Absent exclusivity, a carrier could have reduced incentives to engage in these competitive activities in support of a handset model because: (a) many of the benefits would accrue to other carriers offering that model (through what is known as *free riding*); (b) the carrier would be reluctant to make commitments that required high sales volumes to be successful because of concern for insufficient demand (as a result of what are known as *contractual externalities*); and (c) the handset manufacturer would be in a better position to appropriate the benefits of the carrier's investments by threatening to switch the manufacturer's handset distribution to other carriers (a tactic known as *hold up*). For a more complete discussion of the incentive effects of exclusivity arrangements, see Katz, *Exclusivity Analysis*.

conditions do not apply to the CMRS marketplace and the arrangements under attack by commenters. In some market settings (*e.g.*, when there is a dominant distributor that locks up such a substantial portion of the suppliers that rival distributors are left without competitively viable supply options and there are no offsetting efficiency benefits from the exclusive arrangements), exclusive contracts can harm competition, to the detriment of consumers. Those conditions do not apply here. First, there are many different manufacturers selling handsets through many different carriers. There are literally hundreds of handset options in the marketplace, and no single handset or manufacturer enjoys a dominant position. Second, this is not a marketplace in which there is a single, dominant distributor that has obtained exclusive distribution rights. Rather, many different carriers have negotiated exclusive rights to distribute individual handsets from many different manufacturers. In many instances, a single handset manufacturer has exclusive deals with several different wireless carriers, where each arrangement covers a different handset model. Such arrangements do not exclude rival carriers from dealing even with that handset manufacturer. Moreover, as just noted, there is no dominant handset manufacturer. These market facts are inconsistent with a theory that exclusive deals are being used to keep either handset manufacturers or carriers from competing. There is simply no support for the conclusion that these exclusive contracts are exclusionary and harm consumers.

44. Claims that exclusive handset arrangements are stifling competition look particularly misplaced in the light of recent marketplace developments. The iPhone is the poster child of opponents of exclusive handset arrangements, who claim that access to the iPhone is essential for a service provider to compete. Yet, far from showing the competitive harms of exclusive

distribution arrangements, the iPhone provides a vivid illustration of the competitive benefits. The exclusive arrangement between Apple and AT&T in the United States created an economic environment in which AT&T was willing to invest in network improvements to support certain innovative features of the iPhone, such as visual voicemail, and to engage in extensive promotional activities and customer training specific to the iPhone.⁵⁰ Absent the exclusivity provisions, AT&T's investment incentives would have been significantly diminished. Moreover, the introduction of the iPhone on AT&T's network is widely credited with having spurred other handset manufacturers and carriers to introduce a range of new, competing offerings. That innovation continues. Despite claims by some wireless service providers that the iPhone is an essential facility, the Blackberry Curve outsold the iPhone in the previous quarter of this year.⁵¹ And the new Palm handset and operating system has attracted a great deal of interest with its highly innovative features.⁵²

B. LIMITATIONS ON SERVICES OR FEATURES

45. CFA *et al.* assert that individual carrier's decisions to limit the use of—or in other ways not support specific wireless applications—is evidence of a lack of competition.⁵³ They

⁵⁰ Visual voicemail provides a visual index of the voicemail messages that a user has received, and it allows him or her to access those messages in any order.

⁵¹ NPD Group, "RIM Unseats Apple in The NPD Group's Latest Smartphone Ranking," available at http://www.npd.com/press/releases/press_090504.html, site visited July 6, 2009.

⁵² Walter S. Mossberg, "Palm's New Pre Takes On iPhone," *The Wall Street Journal*, June 4, 2009, available at <http://online.wsj.com/article/SB124407239691783093.html#printMode>, site visited July 11, 2009; Sprint News Release, "Sprint Sets Sales Record With Weekend Debut of Palm Pre," available at http://newsreleases.sprint.com/phoenix.zhtml?c=127149&p=irol-newsArticle_newsroom&ID=1297438&highlight=, site visited July 11, 2009.

⁵³ CFA Comments at 12-13.

make particular reference to the fact that the Skype application for the iPhone works only on WiFi not on AT&T's 3G network. The claim that AT&T's actions show a lack of effective competition suffers from two fundamental problems, one factual and the other logical. First, AT&T markets other handsets that can run Skype's application on 3G.⁵⁴ Hence, AT&T is not acting to exclude Skype from the marketplace. Second, even in an effectively competitive market, suppliers that have made large investments to build out extensive facilities may take actions that allow them to earn a return on those investments.⁵⁵

46. CFA *et al.* also assert that limitations on the availability of certain services when handsets are operated on particular networks indicate a lack of effective competition, and their comments point to the fact that two features of the latest model of iPhone (MMS and

⁵⁴ For example, Skype has released an application for Windows Mobile handsets that permits Skype calls to be placed over AT&T's 3G network. (See "Skype 3.0 for Windows® Phones," available at <http://www.skype.com/intl/en/download/skype/windowsmobile>, site visited July 11, 2009; see also Marin Perez, "Skype For Windows Phones Outclasses iPhone App," *Information Week* June 30, 2009, available at <http://www.informationweek.com/news/mobility/voip/showArticle.jhtml?articleID=218102086>, site visited July 11, 2009.) AT&T offers numerous Windows Mobile handsets, including handsets from Samsung (Epix, Propel, and Blackjack), HTC (Fuze), Pantex (Matrix), LG (Insight), and Motorola (MotoQ). (AT&T, "PDAs and Smartphones," available at <http://www.wireless.att.com/cell-phone-service/cell-phones/pda-phones-smartphones.jsp>, site visited July 13, 2009.) In addition, Skype's website provides an application called Skype Lite that allows customers to make calls on 3G networks using a variety of other handsets, including handsets offered by AT&T, e.g., Nokia E71. (See <http://www.skype.com/download/skype/mobile> and <http://www.wireless.att.com/cell-phone-service/cell-phones/index.jsp>. Sites visited July 13, 2009.) Another company, known as Fring, provides free software that allows users to make Skype calls over AT&T's 3G network using devices running Nokia's Symbian software, such as the Nokia E71 offered by AT&T, or devices running Windows Mobile. (See http://www.fring.com/fring_is/how_fring_works/; see also, http://documentation.fring.com/index.php?title=Supported_Handsets. Sites visited July 13, 2009)

⁵⁵ Similar considerations apply to misplaced claims that refusals by carriers that have made extensive investments in wireless data networks to provide automatic data roaming on the terms that certain carriers that have made limited investments data networks would prefer are somehow indicative of a lack of effective competition.

tethering) do not yet operate over AT&T's 3G network.⁵⁶ However, rather than indicating that the wireless market is uncompetitive, this example points out the importance of allowing exclusive handset arrangements so that carriers and handset manufacturers have incentives to work together to enable the operation of all features. Indeed, AT&T has announced that it is undertaking the necessary steps to implement those two additional features of the latest iPhone in the very near future.⁵⁷

C. PRICING

47. CFA *et al.* assert that wireless carriers engage in parallel pricing and that such pricing is indicative of collusion.⁵⁸ These claims lack either an empirical or theoretical basis. First, empirical data indicate that carriers do not engage in parallel pricing. This is so for two reasons. One, the prices themselves are not equal and do not move in lock step.⁵⁹ Second, wireless operators offer multi-dimensional services that vary across carriers. Hence, even if nominal prices were the same across carriers, the quality-adjusted prices would not be. Turning to economic theory, it has long been recognized that, in equilibrium, perfectly

⁵⁶ CFA *Comments* at 12-13.

⁵⁷ AT&T has stated that "Later this summer, as part of the 3.0 software, AT&T will make multimedia messaging (MMS) available at no extra cost to customers with a text messaging bundle. And, in the future, AT&T will offer tethering capability for iPhone 3G S and iPhone 3G." AT&T, "iPhone 3G S Frequently Asked Questions," available at <http://www.wireless.att.com/learn/internet/iphone-faq.jsp>, site visited July 11, 2009.)

⁵⁸ CFA *Comments* at 8.

⁵⁹ For short message services, for example, the timing of changes in per message prices of the four largest wireless companies has varied, and the companies offer a variety of monthly plans with different characteristics. (Testimony of Randal S. Milch, Executive Vice President And General Counsel, Verizon Communications Inc., before the Subcommittee on Antitrust, Competition Policy, and Consumer Rights, Committee on the Judiciary, United States Senate, Cell Phone Text Messaging Rates Increases and the State of Competition in the Wireless Market, June 16, 2009 (hereinafter *Milch Testimony*) at 16-18.)

competitive firms will all charge the same price as one another. Hence, it is simply false to assert that evidence of parallel pricing (if it existed) would establish that service providers were engaged in a collective exercise of market power.⁶⁰

48. CFA *et al.* also make incorrect claims about the relationship between the prices and underlying costs of short message services (SMS, commonly known as “text” messaging services).⁶¹ CFA *et al.* make false or misleading claims about both costs and prices. First, CFA *et al.* make the false claim that text message services consume no spectrum resources and are essentially costless to provide.⁶² In fact, text messages consume radio, backhaul, and server capacity. High volumes of SMS traffic force carriers to undertake additional facilities investment in order to avoid degrading their voice, data, and SMS offerings. Moreover, the provision of SMS requires the construction and operation of certain dedicated facilities.

49. In addition to making misleading claims about costs, CFA *et al.* make misleading claims about SMS prices. Specifically, CFA *et al.* focus on the price per text message in those cases in which the consumer has not subscribed to a text messaging plan.⁶³ This focus is misleading because 99 percent of all text messages sent by AT&T and Verizon Wireless’s

⁶⁰ Courts recognize that parallel pricing is as consistent with competition as with collusion. For example, the Supreme Court has found that more than evidence of parallel pricing is needed in order to bring a Section 1 claim under the Sherman Act. (See *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955.)

⁶¹ CFA *Comments* at 11.

⁶² CFA *Comments* at 11 assert

Text messaging files are very small, and the price of their transmission is negligible for the provider....The text message is a free rider inside a so-called ‘control channel,’ or space that is already being used to operate the wireless network. In other words, a text message does not use up any extra spectrum once the carrier pays the cost of the underlying infrastructure and storage equipment.

customers are priced under a text message pricing plan.⁶⁴ Rather than the \$0.20 per message cited by CFA *et al.*, the average price per text message for AT&T customers was \$0.014 in March 2009.⁶⁵ For Verizon Wireless customers, the average price per text message was about \$0.0104 in April 2009.⁶⁶ Hence, the price cited by CFA *et al.* is over 1,300 percent greater than the average price actually paid by AT&T and Verizon Wireless's customers. Moreover, the March 2009, price for AT&T services constitutes a 67 percent decline from the average price of \$0.043 in January 2007, while the price for Verizon Wireless services in 2009 constitutes a 62 percent decline from the average price of \$0.028 in December 2006.⁶⁷ Thus, the pricing trend in text messaging is exactly the opposite of what CFA *et al.* claim. Rather than text prices being high and rising (as claimed by CFA *et al.*), text prices are, in fact, low and declining.

50. CFA *et al.* assert that the fact that U.S. consumers pay more, on a per subscriber basis, than the average consumer in other OECD countries indicates that CMRS is not competitive in the U.S.⁶⁸ This analysis is superficial and incomplete. In addition to examining average spend, one would have to examine the quantity and quality of the services for which consumers are paying. U.S. subscribers, for example, used an average of 3,287 outgoing

⁶³ CFA Comments at 10.

⁶⁴ Statement of Wayne Watts, Senior Executive Vice President & General Counsel, AT&T Inc., before the Subcommittee on Antitrust, Competition Policy, and Consumer Rights, Committee on the Judiciary, United States Senate, Hearing on Cell Phone Text Messaging Rate Increases and the State of Competition in the Wireless Market, June 16, 2009 (hereinafter, *Watts Testimony*) at 4; *Milch Testimony* at 5.

⁶⁵ *Watts Testimony* at 5.

⁶⁶ *Milch Testimony* at 12.

⁶⁷ *Watts Testimony* at 4-5; *Milch Testimony* at 12.

mobile minutes in 2005. Only Canada had a higher number of outgoing minutes per subscriber (3,856), and all other OECD countries for which data were available had much lower average outgoing minutes.⁶⁹ Given that U.S. consumers purchase many more mobile voice services than consumers in other OECD countries, it should hardly be surprising that U.S. consumers pay more, in total, for those services.

D. EARLY TERMINATION FEES

51. Commenters who contend that early termination fees are both a cause and consequence of market power⁷⁰ ignore: (a) the fact that early termination fees support handset subsidies that many consumers find highly desirable, (b) economic scholarship showing that early termination fees can intensify competition. Effect (b) arises because a carrier is willing to compete very vigorously to attract consumers who are then more likely to stay with that carrier.

VI. EFFECTIVE COMPETITION DOES NOT REQUIRE PERFECT COMPETITION

52. As observed above, it is widely understood that real-world markets exhibit varying degrees of imperfect competition. This fact raises the following question: How competitive is competitive enough? Put another way: When competition is imperfect, when is it nevertheless “effective?”

⁶⁸ *CFA Comments* at 8.

⁶⁹ Calculations from data provided in OECD, *OECD Telecommunications Outlook, 2007*, Table 4.7. Cellular Mobile Subscribers in the OECD Area, and Table 4.10: Total Outgoing Mobile Minutes, available at www.oecd.org/sti/telecom/outlook. Note that the average revenue data cited in the *CFA Comments* are for 2005, not 2007 as stated.

53. Reliable answers to these queries cannot be developed in isolation. In order to establish a meaningful benchmark, one must proceed with an underlying policy issue or objective in mind. For example, one useful question would be the following: When is a market competitive enough that consumers are better served by permitting the unfettered operation of market forces rather than subjecting suppliers to extensive regulation?⁷¹
54. There is a consensus among economists that market outcomes generally possess desirable characteristics barring certain *market failures*.^{72, 73}
55. Critical to economically sound policy-making is a recognition that a market's imperfect operation does not imply that regulation is desirable. Like competition, regulation is never perfect in practice, and the costs and benefits of intervention must be carefully assessed and balanced.⁷⁴ Economic welfare depends on the net effect of policy intervention,

⁷⁰ CFA Comments at 14-15.

⁷¹ Of course, some degree of government intervention in markets is almost always needed. There is a consensus among economists that government intervention is fundamental to the existence of well-functioning markets: governments define property rights and enforce contracts, which greatly facilitate private commercial activity. This type of intervention is very different than what is typically meant by “regulation” in discussions of telecommunications policy.

⁷² Although there is more than one possible taxonomy, a useful one is that market failures can arise from: (a) significant market power; (b) externalities or missing markets; and (c) asymmetric information.

⁷³ There is also a consensus among economists that market outcomes do not necessarily coincide with social and political conceptions of fairness. A common response is to call for a division of labor in policies under which economy-wide tax schemes are used to redistribute income to achieve fairness, and market-specific governmental intervention is limited to correcting market failures or ameliorating their effects.

⁷⁴ These costs may include not only the administrative costs of regulation, but also the unintended, deleterious effects of regulation on market performance and efficiency.

i.e., the difference between benefits and costs. A policy is efficiency-enhancing only if its benefits exceed its costs.

56. In its determination of whether a market is “effectively competitive,” the Commission should ask whether, given the structure and performance of the market, pervasive government regulation would be expected to yield a net benefit, *i.e.*, be efficiency-enhancing. If the answer is “no,” then regulation would be counterproductive and thus unwarranted.

57. Imposing broad regulatory burdens on competitive firms where no or only very limited regulation is warranted will be costly to firms, will distort competition, and will harm consumers. The Commission should not intervene in the CMRS industry unless there is strong evidence that there is a competitive problem.

58. The Commission’s historical consideration of market performance and conduct metrics has provided useful indicators of whether competition among service providers is advancing consumer welfare through the expansion of service offerings, the development and promotion of innovative technologies, and the lowering of prices. For the past decade, those indicators, as well as other marketplace facts have *not* indicated a problem rising to the level where regulatory intervention is warranted. In its most recent study of CMRS competition, the Commission reported that 94 percent of all United States consumers had access to four or more wireless competitors.⁷⁵ Output, prices, data speeds, broadband coverage, quality, and investment all continue to exhibit positive trends.⁷⁶ And innovation is

⁷⁵ *Thirteenth CMRS Competition Report*, ¶ 41.

⁷⁶ *Thirteenth CMRS Competition Report*, ¶¶ 197 (increase in subscribership), 201 (increase in data subscribership), 208 (increase in minutes of use), 210 (increase in text/SMS traffic), 188

occurring at a significant pace as providers compete to offer new wireless features, functionalities, devices and applications.

59. In addition, none of the conduct identified by commenters and discussed in Section V above is inconsistent with effective competition. Nonetheless, it is useful to observe that, even if some carrier were shown to have engaged in behavior that could not be explained as competitive activity, such a showing would not mean that one could conclude that the market was not effectively competitive or that regulation was warranted. Before reaching such conclusions, one would have to assess: (a) whether competition from other carriers limited any adverse effects of the behavior at issue; (b) whether consumers would seek alternative suppliers so that the carrier in question would be induced to modify its behavior in the longer run; and (c) whether there was any feasible regulatory intervention for which the expected benefits were greater than the expected costs.

VII. THE COMMISSION SHOULD REJECT REQUESTS THAT IT HARM COMPETITION AND PROTECT SPECIFIC COMPETITORS

60. Commenters representing smaller wireless service providers have in several instances confused consumer welfare with competitor welfare. They have asked the Commission for a laundry list of special concessions that may benefit these service providers as competitors but will not strengthen competition. Indeed, granting these concessions would weaken competition because it would weaken the incentives of both larger and smaller wireless carriers to invest and compete.

(decrease in average price of voice services), 194 (decrease in average price of text/SMS services), 205 (increase in usage of mobile broadband), 155 (large capital expenditures), 159 (investments in network infrastructure and additional spectrum to improve network quality).

A. EXTENSION OF ROAMING OBLIGATIONS

61. Several commenters have asked that the Commission impose on wireless carriers an automatic data roaming obligation and that the obligation extend not only to currently available technologies for carrying data traffic but to future technologies as well.^{77, 78} Commenters assert that the imposition of such an obligation would enhance competition.⁷⁹ There are, however, sound reasons to conclude that the opposite is true.

62. There are at least two broad mechanisms through which mandatory roaming can adversely affect network investment and, hence, competition. First, if a service provider is forced to share portions of its facilities with rival providers, then it will have diminished investment incentives because that investment will not be a source of competitive advantage. Rival providers' use of the shared input may lead them to increase the intensity of their other competitive activities, which harms the investing service provider. Absent a duty to deal, a service provider would not worry that other providers would use the facilities or programming funded by its investments to compete against it. Consequently, the service provider will have lower investment incentives when it is subject to a duty to deal.

⁷⁷ Comments Of Cricket Communications, Inc., *In the Matter of Implementation of Section 6002(b) of the) WT Docket No. 09-66 Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with respect to Commercial Mobile Services*, WT Docket No. 09-66, June 15, 2009 (hereinafter *Cricket Comments*) at 11; *MetroPCS Comments* at 13, 18; Comments of the Rural Telecommunications Group, Inc., *In the Matter of Fourteenth Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Service*, WT Docket No. 09-66, § VI.

⁷⁸ "Automatic" voice, SMS, or data roaming arrangements allow customers of one wireless company to use their handsets for voice, SMS, or data functions, respectively, when roaming on another company's network without entering additional codes or obtaining credit authorizations.

⁷⁹ *Cricket Comments* at 11.

63. Second, mandatory roaming can adversely affect the investment incentives of service providers that can take advantage of the regulations to gain access to other service provider's facilities. This type of regulation is intended to stimulate complementary investment, and in some instances it can do so. But mandatory roaming at relatively low prices can undermine the incentives of the service providers gaining access to the facilities of other providers to make their own investments—why invest in your own network when another carrier can be forced to make the investment for you?

64. In summary, an automatic data roaming obligation would discourage large carriers from continuing to invest in advanced networks that can deliver data services because those networks would no longer be a point of differentiation from other networks. Furthermore, an automatic data roaming obligation would discourage smaller carriers from building out their own advanced networks to compete with the larger carriers.

65. These concerns are not just theoretical. In its comments, Cricket Communications claims that “A roaming obligation for data services...would also promote facilities investment and improve the provision of data services to poor and rural communities caught on the wrong side of the digital divide.”⁸⁰ However, statements made by Leap Wireless International, Inc.—Cricket's parent company—to the investment community tell a very different story:

Leap keeps costs low by engineering high-quality, efficient networks *covering only the urban and suburban areas* of our markets where most of our potential customers live, work and play. Leap does not incur the cost of maintaining a network or purchasing licenses simply to provide continuous geographic

⁸⁰ Cricket Comments at 11.

coverage across broad areas.⁸¹

In other words, Leap is leaving it to other carriers to undertake the costly investments necessary to serve rural consumers. Rather than encouraging investment in data networks for underserved communities, imposing automatic data roaming obligations would make it possible for Leap/Cricket to continue to avoid building out its own data networks and avoid competing with other companies for the very rural communities whose situation it laments.⁸²

66. Several commenters have asked that the Commission extend its in-market roaming requirements for voice services. Currently, carriers must be given access to automatic voice roaming in any market in which they do not hold spectrum rights.⁸³ Some commenters want this obligation extended to any market in which the carrier requesting the roaming services does not actually offer network coverage, even if the requesting carrier holds a spectrum license for the area in question.⁸⁴ For the same reasons just discussed with respect to data roaming, such a policy would benefit select competitors, but would very likely harm competition and consumers.

⁸¹ Corporate Profile, Leap Wireless, available at <http://phx.corporate-ir.net/phoenix.zhtml?c=95536&p=irol-homeProfile&t=&id=&>, site visited July 8, 2009 [emphasis added].

⁸² MetroPCS is another commenter that favors mandatory data roaming (*MetroPCS Comments* at 13) but apparently avoids rural areas: “We offer wireless broadband personal communication services, or PCS, on a no long-term contract, flat rate, unlimited usage basis in *selected major metropolitan areas* in the United States.” (Investor Overview, MetroPCS, available at <http://investor.metropcs.com/phoenix.zhtml?c=177745&p=irol-IRHome>, site visited July 8, 2009 [emphasis added].)

⁸³ 47 CFR 20.12(d).

⁸⁴ *CFA Comments* 28-30; *MetroPCS Comments* at 13-19; *BHN Comments* at 9.

B. EXCLUSIVE HANDSET DISTRIBUTION ARRANGEMENTS

67. Several smaller wireless carriers have asserted that exclusive distribution arrangements between handset manufacturers and large, national carriers impair competition and/or have asked the Commission to examine limiting the ability of handset manufacturers to enter into such arrangements.⁸⁵ However, as discussed in Section V.A above, these arrangements are pro-competitive. These comments are equating harm to competitors' commercial interests with harm to competition.⁸⁶

C. A SPECTRUM CAP AND OTHER RESTRICTIONS ON COMPETITION FOR LICENSE RIGHTS

68. Commenters have asked that the Commission limit wireless service providers' abilities to bid on new spectrum.⁸⁷ Although it is understandable that small carriers would prefer to reduce the number of bidders for spectrum and therefore reduce the competition that they face, such a restriction on competition would not benefit consumers.

69. As I have explained at length elsewhere, a binding spectrum cap would distort and attenuate competition.⁸⁸ Most fundamentally, such a cap would restrict competition by

⁸⁵ *MetroPCS Comments* at 9-10; *Cellular South Comments* at 8-10.

⁸⁶ For example, Cellular South repeatedly complains that handset exclusivity deals entered into by large carriers make it more difficult for Cellular South and other small carriers to attract consumers and thus are "harmful to rural and smaller regional carriers." (*Cellular South Comments* at ii, 13, 14, 17, 18.) MetroPCS, despite describing the CMRS market as "competitive," complains that exclusive handset arrangement make it more difficult for small carriers to compete. (*MetroPCS Comments* at ii and 10.)

⁸⁷ *Cricket Comments* at 11.

⁸⁸ Michael L. Katz, "An Economic Analysis of the Rural Telecommunications Group's Proposed Spectrum Cap," December 2, 2008, Appendix A to Opposition of Verizon Wireless, *In the Matter of Rural Telecommunications Group Petition for Rulemaking to Impose a Spectrum Aggregation Limit on all Commercial Terrestrial Wireless Spectrum Below 2.3 GHz*, RM-11498, December 2, 2008.

restricting output. A spectrum cap would restrict output because it would make it more difficult and costly (and, in some cases, impossible) for a service provider to expand when it had developed, or—in the case of innovation—was contemplating the development of, a service or device that required additional spectrum to meet consumer demand. A spectrum cap would thus harm consumers through the resulting combination of higher prices, lower service quality, and diminished innovation in service and handset offerings.

70. There are several mechanisms through which a binding spectrum cap would harm competition and consumers, and would lead to economic inefficiency:

- A spectrum cap would force firms constrained by the cap to use an inefficient input mix. The effect would be to raise the costs of expanding service. Economic analysis clearly indicates that raising the marginal costs of successful wireless service providers would generally induce those firms to charge higher prices and sell less of their services. Consumers who continued to subscribe to these carriers—or who would have subscribed to them at the lower prices the carriers would have charged absent the cap—would be harmed.
- Smaller wireless carriers might not find a spectrum cap to be a constraint on their behavior. However, to the extent that the significant rivals of these smaller carriers were constrained by the cap and, thus, charged higher prices or otherwise competed less aggressively, these smaller carriers could also be expected to compete less vigorously. Stated plainly, a binding spectrum cap could create a pricing umbrella for smaller service providers. The result would be lower industry output and higher

equilibrium prices. Although those carriers unconstrained by the spectrum cap would gain from the loss of competition, consumers would be harmed.

- The harms to competition and consumers would not be limited to static effects. Innovation would also be harmed. To see why, consider a carrier that was deciding whether to develop and introduce a new service or device that was projected to be very popular with consumers and would increase the carrier's need for spectrum. If the spectrum cap were a binding constraint on the carrier, it would find it more difficult and/or costly to introduce the new service or device. For example, introducing the new service while being unable to expand the carrier's network capacity might lead to network congestion and service degradation. The result would be to weaken innovation incentives and discourage dynamic competition.
- Lastly, in addition to the harm to consumers, there would be efficiency losses resulting from the reallocation of output from service providers that had relatively low costs (and, thus, would tend to have higher market shares and spectrum demands) to service providers that had relatively high costs (and, thus, would tend to have low market shares and low spectrum demands).⁸⁹

These costs of a spectrum cap are particularly striking in comparison with the low potential benefits of a cap given the presence of antitrust policies, such as merger review, that limit the acquisition of spectrum in those instances where it would truly be anticompetitive (*e.g.*, through certain mergers).

D. SPECIAL ACCESS

71. CFA *et al.* and Sprint-Nextel assert that special access pricing distorts competition in the wireless marketplace, both among wireless service providers⁹⁰ and between wireless and wireline service providers.⁹¹ Many of the issues raised in these comments pertain to the relevant markets for special access services, not to the CMRS offerings that are the subject of the present proceeding. I have not studied the competitiveness of the special access business and, thus, cannot offer a full assessment of these commenters' claims regarding the conditions of those markets.⁹² Instead, I will offer two observations relevant to the assessment of effective competition in the CMRS marketplace. First, despite its claim that wireless competition is distorted, Sprint-Nextel states that there is "intense competition among wireless carriers."⁹³ Second, the claims made by both Sprint-Nextel and CFA *et al.* that special access pricing distorts or weakens CMRS competition fails to apply the relevant economic concepts correctly. One such concept is opportunity cost. If, as these commenters allege, the suppliers of special access earn very high returns on their sales of special access

⁸⁹ The relative costs refer to differences in costs after taking into account any differences in service qualities.

⁹⁰ Comments of Sprint-Nextel Corporation, *In the Matter of Commercial Mobile Radio Services Market Competition*, WT Docket No. 09-66, June 15, 2009 (hereinafter, *Sprint Comments*), § II; *CFA Comments*, § III.A.

⁹¹ *Sprint Comments*, § II.

⁹² That said, I observe in passing that Sprint-Nextel's analysis of prices per Mbps (*Sprint Comments* at 5) is highly flawed. Among other problems, it fails to account for differences in the nature of the services (asymmetric versus symmetric connection speeds) and the traffic patterns of the users (*e.g.*, a single household versus a wireless carrier that is multiplexing the signals of many different end users).

Similarly, Sprint-Nextel's claims about special access providers' profits (*Sprint Comments* at 6) do not confront the difficulties inherent in attempting to infer economic profits or the degree of competition from accounting metrics. See Section IV above.

services to non-affiliated wireless service providers, then favoring their own wireless affiliates in ways that take sales from unaffiliated service providers would cause them to forgo those profits. Recognition of opportunity costs thus creates incentives for an economically rational, integrated supplier of special access and wireless services not to distort competition in favor of its own affiliate. Stated differently, Sprint-Nextel is asserting that AT&T foregoes the opportunity to earn very high special access returns in order to win business in the wireless segment that it recognizes is intensely competitive. Moreover, the claims by Sprint-Nextel and CFA *et al.* that special access providers earn high profits from those services tends to undermine the conclusion that special access is being priced in an exclusionary fashion. If special access prices were being used for exclusionary purposes, one would expect to see evidence that those prices were elevated above the levels that would maximize the profits derived from special access sales. Lastly, it is incorrect to equate the level of an input price with the degree of competition in an output market. For example, it would be a mistake to assert that the airline industry is less competitive whenever aviation fuel prices rise.

VIII. CONCLUSION

72. The Commission has sought comment on whether it should continue to utilize a range of economic indicators to gauge competition in the provision of CMRS, or in the alternative to “define effective competition in a more specific manner.”⁹⁴ The Commission also sought comment on which “specific criteria should be used to determine whether there is ‘effective

⁹³ *Sprint Comments* at 7.

competition’ among CMRS providers.”⁹⁵ For the reasons explained above, there is no simple formula or recipe that can be utilized reliably to assess competitive performance. Rather, the concept of effective competition is best understood, and its measurement best undertaken, through an examination of a range of well-established economic indicia.

73. The discussion above indicates some of what can go wrong with simplistic analysis. No one measure of competition is perfect, particularly in a complex and dynamic industry like CMRS, and some of the measures proposed or advocated by the Commission and/or commenters have serious shortcomings that limit their applicability or caution against their use altogether. In particular, with respect to the proposed use of accounting measures and the Lerner Index, reliance upon such metrics would lead to distorted assessments of competition and, quite possibly, incorrect indications of the need for regulatory intervention that would undermine—rather than promote—effective competition and consumer welfare.

74. Past Commission analyses have been rooted in a comprehensive assessment of indicia well-understood by economists as highly probative of a market’s competitive performance. To abandon this longstanding approach in favor of a simple and rigid formula could distort the Commission’s assessment of competition in CMRS, generate misleading results, and ultimately risk the imposition of regulatory intervention that is both costly and counterproductive to the promotion of economic efficiency and consumer welfare. Therefore, in order to promote the goal of effective competition in CMRS, the Commission should continue critically and carefully to examine multiple indicators of competition.

⁹⁴ *Public Notice* at 3.

APPENDIX: QUALIFICATIONS

75. I hold the Sarin Chair in Strategy and Leadership at the University of California, Berkeley, where I have a joint appointment in the Haas School of Business Administration and the Department of Economics. I have served as the Harvey Golub Professor of Business Leadership at New York University's Stern School of Business and on the faculty of the Department of Economics at Princeton University. I received my A.B. from Harvard University *summa cum laude* and my doctorate from Oxford University. Both degrees are in Economics.

76. I specialize in the economics of industrial organization, which includes the study of antitrust and regulatory policies. I regularly teach courses on microeconomics and business strategy. I am the co-author of a microeconomics textbook, and I have published numerous articles in academic journals and books. I have written academic articles on issues regarding the economics of network industries, systems markets, antitrust enforcement, and telecommunications policy. I am recognized as one of the pioneers in extending the theory of network effects to competitive settings. I am a co-editor of the *Journal of Economics and Management Strategy* and serve on the editorial boards of *Information Economics and Policy* and the *Journal of Industrial Economics*. I recently completed a term on the Computer Science and Telecommunications Board of the National Academies.

77. In addition to my academic experience, I have consulted on the application of economic analysis to issues of antitrust and regulatory policy. I have served as a consultant to both the U.S. Department of Justice and the Federal Communications Commission on issues of antitrust and regulatory policy. I have served as an expert witness before state and federal

courts. I have also provided testimony before state regulatory commissions and the U.S. Congress.

78. From January 1994 through January 1996, I served as the Chief Economist of the Federal Communications Commission under the Clinton Administration. I participated in the formulation and analysis of policies toward all industries under Commission jurisdiction. As Chief Economist, I oversaw both qualitative and quantitative policy analyses.

79. From September 2001 through January 2003, I served as the Deputy Assistant Attorney General for Economic Analysis at the U.S. Department of Justice under the Bush Administration. I directed a staff of approximately fifty economists conducting analyses of economic issues arising in both merger and non-merger enforcement. Our principal professional focus was on understanding and projecting the impacts of various business practices and public policy decisions on consumers' economic welfare. My title as Deputy Assistant Attorney General notwithstanding, I am not an attorney.

EXHIBIT B

SAMPLE VOICE AND DATA PLANS FOR T-MOBILE, SPRINT, VERIZON AND AT&T



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Plan name	Whenever Minutes	Weekend/ Night Mins	myFaves Minutes	Price per month	
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Now Includes Unlimited T-Mobile To T-Mobile Calling!					
myFaves 600	600	Unlimited	Unlimited	\$49.99	add to cart <input type="checkbox"/> compare
Now Includes Unlimited T-Mobile To T-Mobile Calling!					
myFaves 1000	1000	Unlimited	Unlimited	\$59.99	add to cart <input type="checkbox"/> compare
Now Includes Unlimited T-Mobile To T-Mobile Calling!					
myFaves 1500	1500	Unlimited	Unlimited	\$69.99	add to cart <input type="checkbox"/> compare

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Get great value with the most minutes. National plans give you free domestic long distance and no digital roaming charges anywhere across the US. All plans \$49.99/month and over include unlimited T-Mobile to T-Mobile calling, too! Choose a regional plan for free long distance and no digital roaming charges while you're inside the specified region. Click on the plan name for specific region details. All individual plans require a two-year contract.

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DC/Baltimore Regional Rate Plan	3000	Local plans that go the distance.		\$49.99	add to cart <input type="checkbox"/> compare
Individual 300	300	Unlimited Weekends	N/A	\$29.99	add to cart <input type="checkbox"/> compare
Individual 1000	1000	None	N/A	\$39.99	add to cart <input type="checkbox"/> compare
Individual 600	600	Unlimited	N/A	\$39.99	add to cart <input type="checkbox"/> compare
Limited Time Offer					
Individual Plus Promotional	1000	Unlimited	N/A	\$39.99	add to cart <input type="checkbox"/> compare
Now Includes Unlimited T-Mobile To T-Mobile Calling!					
Individual 1000 Plus	1000	Unlimited	N/A	\$49.99	add to cart <input type="checkbox"/> compare
Now Includes Unlimited T-Mobile To T-Mobile Calling!					
Individual 1500	1500	Unlimited	N/A	\$59.99	add to cart <input type="checkbox"/> compare
Individual Unlimited	Unlimited	Unlimited	Unlimited	\$99.99	add to cart <input type="checkbox"/> compare
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myFaves 300 with FlexPay	300	Unlimited	Unlimited	\$39.99	add to cart <input type="checkbox"/> compare
Now Includes Unlimited T-Mobile To T-Mobile Calling!					
myFaves 600 with FlexPay	600	Unlimited	Unlimited	\$49.99	add to cart <input type="checkbox"/> compare
Now Includes Unlimited T-Mobile To T-Mobile Calling!					
myFaves 1000 with FlexPay	1000	Unlimited	Unlimited	\$59.99	add to cart <input type="checkbox"/> compare
Now Includes Unlimited T-Mobile To T-Mobile Calling!					
myFaves 1500 with FlexPay	1500	Unlimited	Unlimited	\$69.99	add to cart <input type="checkbox"/> compare

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Individual 300 with FlexPay	300	Unlimited Weekends	N/A	\$29.99	add to cart <input type="checkbox"/> compare
Limited Time Offer					
Individual 1000 Plus with FlexPay Promotional	1000	Unlimited	N/A	\$39.99	add to cart <input type="checkbox"/> compare
Individual 600 with FlexPay	600	Unlimited	N/A	\$39.99	add to cart <input type="checkbox"/> compare
Individual 1000 with FlexPay	1000	None	N/A	\$39.99	add to cart <input type="checkbox"/> compare
Now Includes Unlimited T-Mobile To T-Mobile Calling!					
Individual 1000 Plus with FlexPay	1000	Unlimited	N/A	\$49.99	add to cart <input type="checkbox"/> compare
Now Includes Unlimited T-Mobile To T-Mobile Calling!					
Individual 1500 with FlexPay	1500	Unlimited	N/A	\$59.99	add to cart <input type="checkbox"/> compare
Individual Unlimited with FlexPay	Unlimited	Unlimited	Unlimited	\$99.99	add to cart <input type="checkbox"/> compare
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- ☐ \$41 - \$60
- ☐ \$61 - \$80
- ☐ \$81 - \$100
- ☐ Above \$100

Whenever Minutes

- ☐ 300 - 600
- ☐ 700 - 1000
- ☐ 1500 - 2500
- ☐ 3000 - 5000
- ☐ Unlimited

Plan Type

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Plan name	Whenever Minutes	Weekend/ Night Mins	myFaves Minutes	Price per month	
myFaves for families 400	400	Unlimited	Unlimited	\$69.99	add to cart <input type="checkbox"/> compare
myFaves for families 700	700	Unlimited	Unlimited	\$79.99	add to cart <input type="checkbox"/> compare

Get More Minutes For Your Money!

myFaves for families 1800	1800	Unlimited	Unlimited	\$89.99	add to cart <input type="checkbox"/> compare
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Get More Minutes For Your Money!

myFaves for families 2500	2500	Unlimited	Unlimited	\$109.99	add to cart <input type="checkbox"/> compare
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Get More Minutes For Your Money!

myFaves for families 3500	3500	Unlimited	Unlimited	\$139.99	add to cart <input type="checkbox"/> compare
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Mobile calling and unlimited nights and weekends! All family plans require a two-year contract.

Plan name	Whenever Minutes	Weekend/ Night Mins	myFaves Minutes	Price per month	
FamilyTime 700	700	Unlimited	N/A	\$59.99	add to cart <input type="checkbox"/> compare
FamilyTime 1000	1000	Unlimited	N/A	\$69.99	add to cart <input type="checkbox"/> compare
Get More Minutes For Your Money!					
FamilyTime 2500	2500	Unlimited	N/A	\$99.99	add to cart <input type="checkbox"/> compare
Get More Minutes For Your Money!					
FamilyTime 3500	3500	Unlimited	N/A	\$129.99	add to cart <input type="checkbox"/> compare
FamilyTime Unlimited	Unlimited	Unlimited	Unlimited	\$149.98	add to cart <input type="checkbox"/> compare

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Plan name	Whenever Minutes	Weekend/ Night Mins	myFaves Minutes	Price per month	
myFaves for families 400 with FlexPay	400	Unlimited	Unlimited	\$69.99	add to cart <input type="checkbox"/> compare
myFaves for families 700 with FlexPay	700	Unlimited	Unlimited	\$79.99	add to cart <input type="checkbox"/> compare
Get More Minutes For Your Money!					
myFaves for families 1800 with FlexPay	1800	Unlimited	Unlimited	\$89.99	add to cart <input type="checkbox"/> compare
Get More Minutes For Your Money!					
myFaves for families 2500 with FlexPay	2500	Unlimited	Unlimited	\$109.99	add to cart <input type="checkbox"/> compare
Get More Minutes For Your Money!					
myFaves for families 3500 with FlexPay	3500	Unlimited	Unlimited	\$139.99	add to cart <input type="checkbox"/> compare

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Minutes®. You'll get two lines with the plan, and if you're eligible, you can add more lines for an additional charge. Plus, you'll get unlimited nationwide T-Mobile to T-Mobile calling and unlimited nights and weekends!

Plan name	Whenever Minutes	Weekend/ Night Mins	myFaves Minutes	Price per month	
Family Time 700 with FlexPay	700	Unlimited	N/A	\$59.99	add to cart <input type="checkbox"/> compare
FamilyTime 1000 with FlexPay	1000	Unlimited	N/A	\$69.99	add to cart <input type="checkbox"/> compare
Get More Minutes For Your Money!					
FamilyTime 2500 with FlexPay	2500	Unlimited	N/A	\$99.99	add to cart <input type="checkbox"/> compare
Get More Minutes For Your Money!					
FamilyTime 3500 with FlexPay	3500	Unlimited	N/A	\$129.99	add to cart <input type="checkbox"/> compare
FamilyTime Unlimited with FlexPay	Unlimited	Unlimited	Unlimited	\$149.98	add to cart <input type="checkbox"/> compare compare

Prices exclusive to T-Mobile.com and valid only with new service activation.



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[Business](#)

Price Per Month

☐ Under \$40
☐ \$41 - \$60
☐ \$61 - \$80
☐ \$81 - \$100
☐ Above \$100

Whenever Minutes

☐ 300 - 600
☐ 700 - 1000
☐ 1500 - 2500
☐ 3000 - 5000
☐ Unlimited

Plan Type

☐ MyFaves
☐ FlexPay

Coverage Check

Check coverage for your FlexPaySM plan
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FlexPay - Monthly Plans

Individual myFaves FlexPay

Individual FlexPay

Family myFaves FlexPay

FamilyTime FlexPay

[compare](#)

Individual myFaves with FlexPay

Call the people who matter most to you—regardless of which carrier they use. myFaves plans give you unlimited calls to the five numbers you call most, as well as free domestic long distance and no digital roaming charges anywhere across the US. All myFaves plans \$49.99/month and over include unlimited T-Mobile to T-Mobile calling, too!

Plan name	Whenever Minutes	Weekend/ Night Mins	myFaves Minutes	Price per month	
myFaves 300 with FlexPay	300	Unlimited	Unlimited	\$39.99	add to cart <input type="checkbox"/> compare
Now Includes Unlimited T-Mobile To T-Mobile Calling!					
myFaves 600 with FlexPay	600	Unlimited	Unlimited	\$49.99	add to cart <input type="checkbox"/> compare
Now Includes Unlimited T-Mobile To T-Mobile Calling!					
myFaves 1000 with FlexPay	1000	Unlimited	Unlimited	\$59.99	add to cart <input type="checkbox"/> compare
Now Includes Unlimited T-Mobile To T-Mobile Calling!					
myFaves 1500 with FlexPay	1500	Unlimited	Unlimited	\$69.99	add to cart <input type="checkbox"/> compare

Individual with FlexPay

[↑ top](#)

Get great value with the most minutes. National plans give you free domestic long distance and no digital roaming charges anywhere across the US. All plans \$49.99/month and over include unlimited T-Mobile to T-Mobile calling, too!

Plan name	Whenever Minutes	Weekend/ Night Mins	myFaves Minutes	Price per month
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<http://www.t-mobile.com/shop/plans/Cell-Phone-Plans.aspx?catgroup=Flexpay-cell-phone-plan>

Page 1 of 4

Individual 300 with FlexPay	300	Unlimited Weekends	N/A	\$29.99	add to cart <input type="checkbox"/> compare
Individual 600 with FlexPay	600	Unlimited	N/A	\$39.99	add to cart <input type="checkbox"/> compare
Individual 1000 with FlexPay	1000	None	N/A	\$39.99	add to cart <input type="checkbox"/> compare
Now Includes Unlimited T-Mobile To T-Mobile Calling!					
Individual 1000 Plus with FlexPay	1000	Unlimited	N/A	\$49.99	add to cart <input type="checkbox"/> compare
Now Includes Unlimited T-Mobile To T-Mobile Calling!					
Individual 1500 with FlexPay	1500	Unlimited	N/A	\$59.99	add to cart <input type="checkbox"/> compare
Individual Unlimited with FlexPay	Unlimited	Unlimited	Unlimited	\$99.99	add to cart <input type="checkbox"/> compare

Family myFaves with FlexPay

[↑ top](#)

myFaves for families plans give you unlimited calls to the five numbers you call most—and everyone can choose their own top five. You'll get two lines with the plan, and if you're eligible, you can add more lines for an additional charge. You'll also get plenty of Whenever Minutes® to share, unlimited nights and weekends, and unlimited T-Mobile to T-Mobile calling.

Plan name	Whenever Minutes	Weekend/ Night Mins	myFaves Minutes	Price per month	
myFaves for families 400 with FlexPay	400	Unlimited	Unlimited	\$69.99	add to cart <input type="checkbox"/> compare
myFaves for families 700 with FlexPay	700	Unlimited	Unlimited	\$79.99	add to cart <input type="checkbox"/> compare
Get More Minutes For Your Money!					
myFaves for families 1800 with FlexPay	1800	Unlimited	Unlimited	\$89.99	add to cart <input type="checkbox"/> compare
Get More Minutes For Your Money!					
myFaves for families 2500 with FlexPay	2500	Unlimited	Unlimited	\$109.99	add to cart <input type="checkbox"/> compare
Get More Minutes For Your Money!					
myFaves for families 3500 with FlexPay	3500	Unlimited	Unlimited	\$139.99	add to cart <input type="checkbox"/> compare

FamilyTime with FlexPay

[↑ top](#)

With FamilyTime plans, you can stay connected and save as you share Whenever Minutes®. You'll get two lines with the plan, and if you're eligible, you can add more lines for an additional charge. Plus, you'll get unlimited nationwide T-Mobile to T-

Mobile calling and unlimited nights and weekends!

Plan name	Whenever Minutes	Weekend/ Night Mins	myFaves Minutes	Price per month	
Family Time 700 with FlexPay	700	Unlimited	N/A	\$59.99	add to cart <input type="checkbox"/> compare
FamilyTime 1000 with FlexPay	1000	Unlimited	N/A	\$69.99	add to cart <input type="checkbox"/> compare
Get More Minutes For Your Money!					
FamilyTime 2500 with FlexPay	2500	Unlimited	N/A	\$99.99	add to cart <input type="checkbox"/> compare
Get More Minutes For Your Money!					
FamilyTime 3500 with FlexPay	3500	Unlimited	N/A	\$129.99	add to cart <input type="checkbox"/> compare
FamilyTime Unlimited with FlexPay	Unlimited	Unlimited	Unlimited	\$149.98	add to cart <input type="checkbox"/> compare
					compare

*T-Mobile customers are bound by [T-Mobile's Terms and Conditions](#).



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Track minutes used,
refill your account,
and more.
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Got Gold?

With Gold
Rewards, get
15% more
minutes—FREE!

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Restrictions apply.

FAQ

How can I get more
minutes when I run
out?

How do I know how
many minutes I have
left?

What's the difference
between prepaid

Prepaid Plans: Great value, flexible options.

Get everything you want in a wireless plan—without an annual contract, credit check, or a monthly bill! Buy a Prepaid phone kit now; when you receive the phone, activate it online and choose one of our two Prepaid plans

Pay By The Day:

Pay only on the days
you use your phone!

Pay As You Go:

Pay only for the
minutes you use!

[Buy a Prepaid phone kit now](#)

Compare Prepaid plans:

	Pay By The Day	Pay As You Go	
Unlimited Nationwide Calling	From 7 pm to 7 am and to any T-Mobile number	None	
Per Minute Costs	10¢/minute all other domestic calls	Refill Amount	Minutes
		\$10	30
		\$25	130
		\$50	400
		\$100	1000
Daily Charge	\$1/day only on the days you use your phone ¹	None	
Gold Rewards	None	Refill \$100 or more and get 15% more minutes on all refills. Your balance lasts for 1 year ²	

¹Day is 12:00 am to 11:59 pm, based on time zone associated with your phone number.

²Service available for 90 days (1 year for \$100 refill cards) after activation.

Included with every T-Mobile Prepaid plan:

Nationwide long distance (including calls to Alaska and Hawaii).
Nationwide roaming on the T-Mobile USA Network.
t-zones* (browsing for HiFi Ringers®, MegaTones®, wallpapers, and more)*.
VoiceMail, caller ID, call waiting, three-way calling**.
E-mail address (10digitnumber@tmomail.net).

*t-zones not available on all devices.

**Airtime rates apply to voicemail retrieval, each call during a conference call, and call waiting.

Additional services for your T-Mobile Prepaid plan+

plans and monthly
calling plans?

Text messaging (10¢ to send, 5¢ to receive, except for Sidekick plan).
Picture messaging (25¢ to send and receive).
Ringtones and wallpaper (prices vary).
Games and applications (prices vary).
411 & More directory assistance (\$1.79 per call plus airtime).
International dialing to over 150 countries ([international rates](#) apply).

[Prepaid international roaming rate information](#) ›

+Additional services not available on all phones.

Sidekick Prepaid

Love to message? Get a Sidekick Prepaid plan for just \$1 a day.

Daily Charge Unlimited domestic e-mail, texting, IM and Web browsing	\$1/day
Per Minute Costs	15¢/minute

[Prepaid Terms and Conditions](#)

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Price Per Month

- ☐ Under \$40
☐ \$41 - \$60
☐ \$61 - \$80
☐ \$81 - \$100
☐ Above \$100

Whenever Minutes

- ☐ 300 - 600
☐ 700 - 1000
☐ 1500 - 2500
☐ 3000 - 5000
☐ Unlimited

Plan Type

- ☐ MyFaves
☐ FlexPay

Internet & Email Plans

[BlackBerry® Plans](#)
[Internet Only](#)
[SideKick® Data](#)

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BlackBerry® Plans

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BlackBerry Enterprise Server

Integrate up to 10 of your existing e-mail accounts and have your messages pushed right to your BlackBerry handheld. To access corporate e-mail and wirelessly synchronize your e-mail, calendar, and contacts with your desktop e-mail application, your company must have a BlackBerry Enterprise Server.** All plans have unlimited [Web browsing](#), [BlackBerry Internet E-mail](#), and [BlackBerry Enterprise Server](#) access.

**Note: BlackBerry Enterprise Server software is an additional charge and must be purchased separately. To find out if your company has a BlackBerry Enterprise Server, ask your IT department.

Plan name	Whenever Minutes	Data per month	E-mail per month	Price per month	
BlackBerry Unlimited w/Enterprise E-mail	None	Unlimited	Unlimited	\$39.98	add to cart <input type="checkbox"/> compare

BlackBerry Internet Service

Choose a data-only plan with unlimited [e-mail](#) and [Web browsing](#), or choose one of our bundled Minutes & Mail plans to add tons of [Whenever Minutes®](#) to these great data features.

Plan name	Whenever Minutes	Data per month	E-mail per month	Price per month	
BlackBerry Unlimited	None	Unlimited	Unlimited	\$39.99	add to cart <input type="checkbox"/> compare

Family plan packages:
Please your family
(and your wallet!)
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Internet Only Plans

[↑ top](#)

Want Internet access on the go? Get [Web browsing](#) everywhere within the T-Mobile network with our Internet-only plans.

[View Data Plan Terms](#)

Plan name	Whenever Minutes	Data per month	E-mail per month	Price per month	
T-Mobile Total Internet	None	Unlimited	Unlimited	\$39.99	add to cart <input type="checkbox"/> compare
T-Mobile webConnect Data Plan	None	5 GB	N/A	\$59.99	add to cart <input type="checkbox"/> compare

SideKick® Data Plan

[↑ top](#)

Get the most from your Sidekick with unlimited [e-mail](#), [AOL® Instant Messenger™](#), [Web browsing](#), and [text messaging](#). If you want to talk as much as you type, you can purchase a voice plan and add unlimited Sidekick Unlimited service.

[View Data Plan Terms](#)

Plan name	Whenever Minutes	Data per month	E-mail per month	Price per month	
Sidekick® Unlimited Web + 300 Messages	None	Unlimited	N/A	\$44.99	add to cart <input type="checkbox"/> compare
Sidekick® Unlimited Web + Unlimited Messages	None	Unlimited	Unlimited	\$54.99	add to cart <input type="checkbox"/> compare

[compare](#)

Prices exclusive to T-Mobile.com and valid only with new service activation.



The list of plans has been filtered based on the criteria below. To see a full list of plans, click [Reset](#) below.

Narrow My List > ☐ Nextel Direct Connect® ☒ Individual ☐ Share ☐ Business ☐ Mobile Broadband Cards

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Create your own stimulus plan

Save up to
\$360/annually
on our Everything Data
Family Plan, compared
to similar AT&T and
Verizon plans.

[Calculate savings](#)

Simply EverythingSM

[Buy with Mobile Broadband and save \\$9.99/mo.](#)

Everything your phone, PDA or smartphone can do nationwide - unlimited text, surf, email, listen, watch, find and of course, talk - on one simple plan.

This plan includes

Unlimited data: Web surfing, email, BlackBerry Internet Services (BIS), GPS Navigation, Music Premier, TV Premier, NFL Mobile Live, NASCAR Sprint Cup MobileSM

Unlimited Direct Connect: Direct Connect and Group Connect (for capable phones)

Unlimited messaging: Text, pictures and video

Unlimited talk: Unlimited anytime minutes, nationwide long distance and no roaming charges

[More about what's included in this plan](#)

	Anytime Minutes	Monthly Price	Additional Anytime Minutes	
Best Value	Unlimited	\$99.99	Unlimited	Select

Everything Data

Maximize your phone's potential with unlimited data, Direct Connect and messages.

This plan includes

Unlimited data: Web surfing, email, BlackBerry Internet Services (BIS), GPS Navigation, Music Premier, TV Premier, NFL Mobile Live, NASCAR Sprint Cup MobileSM

Unlimited Direct Connect: Direct Connect and Group Connect (for capable phones)

Unlimited messaging: Text, pictures and video

Talk: Unlimited mobile to mobile, night calling and weekends starting at 7 p.m., nationwide long distance and no roaming charges

[More about what's included in this plan](#)

Anytime Minutes	Monthly Price	Additional Anytime Minutes	
450	\$69.99	45¢/min	Select
900	\$89.99	40¢/min	Select

Everything Messaging

Communicate without saying a word; with this plan, you can text, share and send your heart out.

This plan includes

Unlimited Direct Connect: Direct Connect and Group Connect (for capable phones)

Unlimited messaging: Text, pictures and video

Talk: Unlimited mobile to mobile, night calling and weekends starting at 7 p.m., nationwide long distance and no roaming charges

[More about what's included in this plan](#)

Anytime Minutes	Monthly Price	Additional Anytime Minutes	
450	\$49.99	45¢/min	Select

900	\$69.99	40¢/min	Select
-----	---------	---------	--------

Talk

Let your voice be heard with these voice-only plans.

This plan includes
Talk: Unlimited mobile to mobile, night calling and weekends starting at 7 p.m., nationwide long distance and no roaming charges
[More about what's included in this plan](#)

Additional plan options:
Unlimited Nights & Weekends
☒ Unlimited Nights & Weekends starting at 7pm! - \$0.00
☐ Nights and Weekends starting at 6PM - \$5.00

Anytime Minutes	Monthly Price	Additional Anytime Minutes	
450	\$39.99	45¢/min	Select
900	\$59.99	40¢/min	Select

Basic

Get back to the basics with this plan ideal for the occasional caller.

This plan includes
Talk: Night calling and weekends starting at 9 p.m., nationwide long distance and no roaming charges
[More about what's included in this plan](#)

Additional plan options:
Unlimited Nights & Weekends
☒ Nights and Weekends - Starting at 9pm - \$0.00
☐ Nights and Weekends - Starting at 7pm - \$5.00
☐ Nights and Weekends - Starting at 6pm - \$10.00

Anytime Minutes	Monthly Price	Additional Anytime Minutes	
200	\$29.99	45¢/min	Select

Nextel Direct Connect® Custom Plans

Do you rely on push-to-talk? Try our Nextel Direct Connect Custom Plans. Pick either Unlimited Work Group Communications (\$29.99) OR Unlimited Work Group Communications + Web and Navigation (\$39.99/\$49.99). Then add voice minutes to share.

This plan includes
Unlimited Direct Connect: Direct Connect and Group Connect
Unlimited Messaging: Text, pictures and video
Talk: Unlimited mobile to mobile, night calling and weekends starting at 9 p.m., nationwide long distance and no roaming charges
[More about what's included in this plan](#)

Additional plan options:

+ Unlimited Web and Navigation
Surf the Net as easily as you do from your laptop or PC and get voice-guided turn-by-turn driving directions, maps, traffic alerts and on-click rerouting.

Anytime minutes
Available to all Nextel Direct Connect Custom Plan subscribers on the same account.

- 500 Anytime minutes – \$30/mo.
- 2,000 Anytime minutes – \$100/mo. Buy now and get an extra 500 minutes!

	Anytime Minutes	Monthly Price	Additional Anytime Minutes	
Work Group Communications	0	\$29.99	40¢/min	Select
Work Group Communications + Web and Navigation	0	\$39.99 / 49.99 Nextel phones / Sprint phones	40¢/min	Select

[Features included in all voice plans.](#)

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**Plans**

Phones



Services



Accessories

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Nextel Direct Connect®



Individual



Share



Business



Mobile Broadband Cards

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Create your own stimulus plan

Save up to

\$360/annually

on our Everything Data
Family Plan, compared
to similar AT&T and
Verizon plans.

[Calculate savings](#)

Simply EverythingSM

[Buy with Mobile Broadband and save \\$9.99/mo.](#)

Everything your phone, PDA or smartphone can do nationwide - unlimited text, surf, email, listen, watch, find and of course, talk - on one simple plan.

This plan includes

Unlimited data: Web surfing, email, BlackBerry Internet Services (BIS), GPS Navigation, Music Premier, TV Premier, NFL Mobile Live, NASCAR Sprint Cup MobileSM

Unlimited Direct Connect: Direct Connect and Group Connect (for capable phones)

Unlimited messaging: Text, pictures and video

Unlimited talk: Unlimited anytime minutes, nationwide long distance and no roaming charges

[More about what's included in this plan](#)

	Anytime Minutes	Monthly Price	Additional Anytime Minutes	
Best Value	Unlimited	\$99.99	Unlimited	Select

Simply EverythingSM Family

[Buy with Mobile Broadband and save \\$9.99/mo.](#)

Everything you need for the whole family - unlimited text, surf, email, listen, watch, find and, of course, talk - on one simple plan.

This plan includes

Unlimited data: Web surfing, email, BlackBerry Internet Services (BIS), GPS Navigation, Music Premier, TV Premier, NFL Mobile Live, NASCAR Sprint Cup MobileSM

Unlimited Direct Connect: Direct Connect and Group Connect (for capable phones)

Unlimited messaging: Text, pictures and video

Unlimited talk: Unlimited anytime minutes, nationwide long distance and no roaming charges

Lines 1-2 included. Lines 3-5 \$89.99/mo./line

[More about what's included in this plan](#)

	Anytime Minutes	Monthly Price	Additional Anytime Minutes	Lines	
Best Value	Unlimited	\$189.98	Unlimited	2	Select

Everything Data

Maximize your phone's potential with unlimited data, Direct Connect and messages.

This plan includes

Unlimited data: Web surfing, email, BlackBerry Internet Services (BIS), GPS Navigation, Music Premier, TV Premier, NFL Mobile Live, NASCAR Sprint Cup MobileSM

Unlimited Direct Connect: Direct Connect and Group Connect (for capable phones)

Unlimited messaging: Text, pictures and video

Talk: Unlimited mobile to mobile, night calling and weekends starting at 7 p.m., nationwide long distance and no roaming charges

[More about what's included in this plan](#)

Anytime Minutes	Monthly Price	Additional Anytime Minutes	
450	\$69.99	45¢/min	Select
900	\$89.99	40¢/min	Select

Everything Data Family

Have fun with your phones —unlimited email, Web, TV, text and more.

This plan includes

Unlimited data: Web surfing, email, BlackBerry Internet Services (BIS), GPS Navigation, Music Premier, TV Premier, NFL Mobile Live and NASCAR Sprint Cup MobileSM

Unlimited messaging: Text, pictures and video

Talk: Unlimited mobile to mobile, night calling and weekends starting at 7 p.m., nationwide long distance and no roaming charges

Lines 1-2 included. Lines 3-5 are \$19.99/mo./line

Featured services for Nextel Direct Connect[®] capable phones: Direct Connect and Group Connect[®] \$5/mo./line (Look for this on the Services page prior to checkout.)

[More about what's included in this plan](#)

Additional plan options:

☐ Unlimited Nights & Weekends

☒ Unlimited Nights & Weekends starting at 7pm! - \$0.00

☐ Nights and Weekends starting at 6PM - \$10.00

Anytime Minutes	Monthly Price	Additional Anytime Minutes	Lines	
1500	\$129.99	40¢/min	<input type="text" value="2"/>	Select
3000	\$169.99	25¢/min	<input type="text" value="2"/>	Select

Everything Messaging

Communicate without saying a word; with this plan, you can text, share and send your heart out.

This plan includes

Unlimited Direct Connect: Direct Connect and Group Connect (for capable phones)

Unlimited messaging: Text, pictures and video

Talk: Unlimited mobile to mobile, night calling and weekends starting at 7 p.m., nationwide long distance and no roaming charges

[More about what's included in this plan](#)

Anytime Minutes	Monthly Price	Additional Anytime Minutes	
450	\$49.99	45¢/min	Select
900	\$69.99	40¢/min	Select

Everything Messaging Family

Share minutes and text your heart out with unlimited messages.

This plan includes

Unlimited messaging: Text, pictures and video

Talk: Unlimited mobile to mobile, night calling and weekends starting at 7 p.m., nationwide long distance and no roaming charges

Lines 1-2 included. Lines 3-5 are \$9.99/mo./line

Featured services for Nextel Direct Connect[®] capable phones: Direct Connect and Group Connect[®] \$5/mo./line (Look for this on the Services page prior to checkout.)



[More about what's included in this plan](#)

Additional plan options:

☐ Unlimited Nights & Weekends

☒ Unlimited Nights & Weekends starting at 7pm! - \$0.00

☐ Nights and Weekends starting at 6PM - \$10.00

Anytime Minutes	Monthly Price	Additional Anytime Minutes	Lines	
1500	\$99.99	40¢/min		Select
3000	\$149.99	25¢/min		Select

Talk

Let your voice be heard with these voice-only plans.

This plan includes

Talk: Unlimited mobile to mobile, night calling and weekends starting at 7 p.m., nationwide long distance and no roaming charges

[More about what's included in this plan](#)

Additional plan options:

Unlimited Nights & Weekends

- ☒ [Unlimited Nights & Weekends starting at 7pm!](#) - \$0.00
- ☐ [Nights and Weekends starting at 6PM](#) - \$5.00

Anytime Minutes	Monthly Price	Additional Anytime Minutes	
450	\$39.99	45¢/min	Select
900	\$59.99	40¢/min	Select

Talk for Family

Let your voice be heard with these voice-only shared plans.

This plan includes

Talk: Unlimited mobile to mobile, night calling and weekends starting at 7 p.m., nationwide long distance and no roaming charges

Lines 1-2 included. Lines 3-5 are \$9.99/mo./line


Featured services for Nextel Direct Connect® capable phones: Direct Connect and Group Connect® \$5/mo./line (Look for this on the Services page prior to checkout.)

[More about what's included in this plan](#)

Additional plan options:

Unlimited Nights & Weekends

- ☒ [Unlimited Nights & Weekends starting at 7pm!](#) - \$0.00
- ☐ [Nights and Weekends starting at 6PM](#) - \$10.00

Anytime Minutes	Monthly Price	Additional Anytime Minutes	Lines	
700	\$69.99	45¢/min		Select

Basic

Get back to the basics with this plan ideal for the occasional caller.

This plan includes

Talk: Night calling and weekends starting at 9 p.m., nationwide long distance and no roaming charges

[More about what's included in this plan](#)

Additional plan options:

Unlimited Nights & Weekends

- ☒ [Nights and Weekends - Starting at 9pm](#) - \$0.00
- ☐ [Nights and Weekends - Starting at 7pm](#) - \$5.00
- ☐ [Nights and Weekends - Starting at 6pm](#) - \$10.00

Anytime Minutes	Monthly Price	Additional Anytime Minutes	
200	\$29.99	45¢/min	Select

Business Essentials with Messaging and Data

Give your employees the tools they need to succeed with 24/7 email access, unlimited texting to always stay connected and driving directions to every important meeting.

This plan includes

Unlimited data: Web surfing, email, BlackBerry Internet Services (BIS), GPS Navigation, Music Premier, TV Premier, NFL Mobile Live, NASCAR Sprint Cup MobileSM

Unlimited Direct Connect: Direct Connect and Group Connect (for capable phones)

Unlimited messaging: Text, pictures and video

Talk: Unlimited mobile to mobile, night calling and weekends starting at 7 p.m., nationwide long distance

and no roaming charges

Already have this plan? Give additional employees access to plan minutes for \$55/mo./line. Call [866-866-7509](tel:866-866-7509) to order.

[More about what's included in this plan](#)

Anytime Minutes	Monthly Price	Additional Anytime Minutes	
400	\$69.99	40¢/min	Select
1000	\$89.99	40¢/min	Select
1400	\$109.99	40¢/min	Select
2000	\$129.99	40¢/min	Select
3000	\$179.99	40¢/min	Select
4000	\$229.99	40¢/min	Select

Business Essentials

Everything you need to keep your business buzzing with pooled minutes available to all Business Essential plan subscribers on the same account.

This plan includes

Unlimited Direct Connect: Direct Connect and Group Connect (for capable phones)

Talk: Unlimited mobile to mobile, night calling and weekends starting at 7 p.m., nationwide long distance and no roaming charges

Already have this plan? Give additional employees access to plan minutes from \$25/mo./line. Call [866-866-7509](tel:866-866-7509) to order.

[More about what's included in this plan](#)

Additional plan options:

Unlimited Nights & Weekends

☒ [Unlimited Nights & Weekends starting at 7pm! - \\$0.00](#)

☐ [Nights and Weekends - Starting at 6pm - \\$10.00](#)

Anytime Minutes	Monthly Price	Additional Anytime Minutes	
400	\$39.99	40¢/min	Select
1000	\$59.99	40¢/min	Select
1400	\$79.99	40¢/min	Select
2000	\$99.99	40¢/min	Select
3000	\$149.99	40¢/min	Select
4000	\$199.99	40¢/min	Select

Nextel Direct Connect® Custom Plans

Do you rely on push-to-talk? Try our Nextel Direct Connect Custom Plans. Pick either Unlimited Work Group Communications (\$29.99) OR Unlimited Work Group Communications + Web and Navigation (\$39.99/\$49.99). Then add voice minutes to share.

This plan includes

Unlimited Direct Connect: Direct Connect and Group Connect

Unlimited Messaging: Text, pictures and video

Talk: Unlimited mobile to mobile, night calling and weekends starting at 9 p.m., nationwide long distance and no roaming charges

[More about what's included in this plan](#)

Additional plan options:

+ Unlimited Web and Navigation

Surf the Net as easily as you do from your laptop or PC and get voice-guided turn-by-turn driving directions, maps, traffic alerts and on-click rerouting.

Anytime minutes

Available to all Nextel Direct Connect Custom Plan subscribers on the same account.

- 500 Anytime minutes – \$30/mo.
- 2,000 Anytime minutes – \$100/mo. Buy now and get an extra 500 minutes!

	Anytime Minutes	Monthly Price	Additional Anytime Minutes	
Work Group Communications	0	\$29.99	40¢/min	Select
Work Group Communications + Web and Navigation	0	\$39.99 / 49.99 Nextel phones / Sprint phones	40¢/min	Select

[Features included in all voice plans.](#)

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Nextel Direct Connect®



Individual



Share



Business



Mobile Broadband Cards

[Reset](#)

Create
your own
stimulus plan

Save up to
\$360/annually
on our Everything Data
Family Plan, compared
to similar AT&T and
Verizon plans.

[Calculate savings](#)

Simply EverythingSM Family

[Buy with Mobile Broadband and save \\$9.99/mo.](#)

Everything you need for the whole family - unlimited text, surf, email, listen, watch, find and, of course, talk - on one simple plan.

This plan includes

Unlimited data: Web surfing, email, BlackBerry Internet Services (BIS), GPS Navigation, Music Premier, TV Premier, NFL Mobile Live, NASCAR Sprint Cup MobileSM

Unlimited Direct Connect: Direct Connect and Group Connect (for capable phones)

Unlimited messaging: Text, pictures and video

Unlimited talk: Unlimited anytime minutes, nationwide long distance and no roaming charges

Lines 1-2 included. Lines 3-5 \$89.99/mo./line

[More about what's included in this plan](#)

	Anytime Minutes	Monthly Price	Additional Anytime Minutes	Lines	
Best Value	Unlimited	\$189.98	Unlimited	<input type="text" value="2"/>	Select

Everything Data Family

Have fun with your phones —unlimited email, Web, TV, text and more.

This plan includes

Unlimited data: Web surfing, email, BlackBerry Internet Services (BIS), GPS Navigation, Music Premier, TV Premier, NFL Mobile Live and NASCAR Sprint Cup MobileSM

Unlimited messaging: Text, pictures and video

Talk: Unlimited mobile to mobile, night calling and weekends starting at 7 p.m., nationwide long distance and no roaming charges

Lines 1-2 included. Lines 3-5 are \$19.99/mo./line

Featured services for Nextel Direct Connect® capable phones: Direct Connect and Group Connect® \$5/mo./line (Look for this on the Services page prior to checkout.)

[More about what's included in this plan](#)

Additional plan options:

Unlimited Nights & Weekends



Unlimited Nights & Weekends starting at 7pm! - \$0.00



Nights and Weekends starting at 6PM - \$10.00

Anytime Minutes	Monthly Price	Additional Anytime Minutes	Lines	
1500	\$129.99	40¢/min	<input type="text" value="2"/>	Select
3000	\$169.99	25¢/min	<input type="text" value="2"/>	Select

Everything Messaging Family

Share minutes and text your heart out with unlimited messages.

This plan includes

Unlimited messaging: Text, pictures and video

Additional plan options:

Unlimited Nights & Weekends

Talk: Unlimited mobile to mobile, night calling and weekends starting at 7 p.m., nationwide long distance and no roaming charges

Lines 1-2 included. Lines 3-5 are \$9.99/mo./line

Featured services for Nextel Direct Connect® capable phones: Direct Connect and Group Connect® \$5/mo./line (Look for this on the Services page prior to checkout.)

[More about what's included in this plan](#)

- ☒ Unlimited Nights & Weekends starting at 7pm! - \$0.00
- ☐ Nights and Weekends starting at 6PM - \$10.00

Anytime Minutes	Monthly Price	Additional Anytime Minutes	Lines	
1500	\$99.99	40¢/min	<div>2</div>	<div>Select</div>
3000	\$149.99	25¢/min	<div>2</div>	<div>Select</div>

Talk for Family

Let your voice be heard with these voice-only shared plans.

This plan includes

Talk: Unlimited mobile to mobile, night calling and weekends starting at 7 p.m., nationwide long distance and no roaming charges

Lines 1-2 included. Lines 3-5 are \$9.99/mo./line

Featured services for Nextel Direct Connect® capable phones: Direct Connect and Group Connect® \$5/mo./line (Look for this on the Services page prior to checkout.)

[More about what's included in this plan](#)

- Additional plan options:
- Unlimited Nights & Weekends
- ☒ Unlimited Nights & Weekends starting at 7pm! - \$0.00
- ☐ Nights and Weekends starting at 6PM - \$10.00

Anytime Minutes	Monthly Price	Additional Anytime Minutes	Lines	
700	\$69.99	45¢/min	<div>2</div>	<div>Select</div>

Nextel Direct Connect® Custom Plans

Do you rely on push-to-talk? Try our Nextel Direct Connect Custom Plans. Pick either Unlimited Work Group Communications (\$29.99) OR Unlimited Work Group Communications + Web and Navigation (\$39.99/\$49.99). Then add voice minutes to share.

This plan includes

Unlimited Direct Connect: Direct Connect and Group Connect

Unlimited Messaging: Text, pictures and video

Talk: Unlimited mobile to mobile, night calling and weekends starting at 9 p.m., nationwide long distance and no roaming charges

[More about what's included in this plan](#)

Additional plan options:

+ Unlimited Web and Navigation
Surf the Net as easily as you do from your laptop or PC and get voice-guided turn-by-turn driving directions, maps, traffic alerts and on-click rerouting.

Anytime minutes
Available to all Nextel Direct Connect Custom Plan subscribers on the same account.

- 500 Anytime minutes – \$30/mo.
- 2,000 Anytime minutes – \$100/mo. Buy now and get an extra 500 minutes!

	Anytime Minutes	Monthly Price	Additional Anytime Minutes	
<div>Work Group Communications</div>	0	\$29.99	40¢/min	<div>Select</div>
<div>Work Group Communications + Web and Navigation</div>	0	\$39.99 / 49.99 <small>Nextel phones / Sprint phones</small>	40¢/min	<div>Select</div>

[Features included in all voice plans.](#)

[Terms & Conditions](#)



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The list of plans has been filtered based on the criteria below. To see a full list of plans, click Reset below.

Narrow My List > ☐ Nextel Direct Connect® ☐ Individual ☐ Share ☐ Business ☒ Mobile Broadband Cards [Reset](#)

Create your own stimulus plan

Save up to \$360/annually on our Everything Data Family Plan, compared to similar AT&T and Verizon plans.

[Calculate savings](#)

Mobile Broadband Connection Plan - 3G

[Buy with Simply EverythingSM and save \\$9.99/mo.](#)

With this plan and your Mobile Broadband device, you have instant Internet access wherever you go on the Sprint Mobile Broadband Network.

This plan includes
5 GB/mo. in total or 300 MB/mo. while off-network roaming. (1024 kb=1MB. 1024 MB=1 GB)

Additional monthly usage over 5 GB costs 5¢/MB. You may not use more than 300 MB/mo. while off-network roaming. You can check your usage online anytime. Log into [www.sprint.com/mysprint](#) and click on usage details.

International data roaming may incur additional charges.

Sprint reserves the right to limit throughput speeds or amount of data transferred. [See what you can do with 5GB or 300MB a month.](#)

[Learn more about what's included in this plan](#)

	Approximate file size*	How many of these can I send or receive in a month (300MB) while roaming?*	How many of these can I send or receive in a month (5GB) while on the Sprint network?*
Email (Text only, no images)	3 KB	100,000	1,700,000
Photo (Low resolution image)	500 KB	600	10,000
Music (3 minute song)	3 MB	98	1,667
Movie (full length feature)	700 MB	0	7

*These file sizes and downloads are estimated and will vary widely depending on lots of different factors. So, you shouldn't really use this information to decide how many videos or songs you can download. To check your current data usage, log on to My Sprint.

Anytime Minutes	Monthly Price	Monthly Usage	
0	\$59.99	5GB	Select

Mobile Broadband Connection Plan - 3G/4G

Get the best of both worlds: Take advantage of turbo-charged unlimited 4G Internet access in the Baltimore area and 5GB of 3G coverage nationwide. [Important coverage and plan information.](#)

This plan includes
An unlimited 4G connection in Baltimore that can keep up with you. Download mammoth files, watch streaming videos and video conferencing without the lag. More coverage locations coming soon!

3G coverage nationwide: 5GB/mo. in total or 300 MB/mo. while off-network roaming. Additional monthly usage over 5GB costs 5¢/MB. You may not use more than 300 MB/mo. while off-network roaming. You can check your usage online anytime. Log into [www.sprint.com/mysprint](#) and click on usage details.

International data roaming may incur additional charges.

Sprint reserves the right to limit throughput speeds or amount of data transferred.

Anytime Minutes	Monthly Price	Monthly Usage	
Unlimited	\$79.99	4G: Unlimited/3G: 5GB	Select

[Features included in all voice plans.](#)

[Terms & Conditions](#)



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Individual Plans

Introducing
Friends & Family.®

Connect More. Spend Less.
Unlimited calling to 5 out-of-network numbers, even landlines.

Plus, as always, get America's Largest Mobile to Mobile Calling Family. All at no extra cost.

On Nationwide Single-Line Plan with 900 Anytime Minutes or more.



OTHER PLANS

[Family Plans](#)

EXISTING CUSTOMERS



[Sign in to My Verizon](#)

[Change Calling Plan](#)

[Add a Line](#)

Plans

	Basic Plans	Select Plans	Connect Plans	Premium Plans*
Monthly Access	Starting at \$39.99	Starting at \$59.99	Starting at \$69.99	Starting at \$79.99
Monthly Anytime Minutes	Starting at 450	Starting at 450	Starting at 450	Starting at 450
Friends & Family	5 numbers included on plans with 900 Anytime Minutes or more	5 numbers included on plans with 900 Anytime Minutes or more	5 numbers included on plans with 900 Anytime Minutes or more	5 numbers included on plans with 900 Anytime Minutes or more
Unlimited Mobile to Mobile Minutes	✓	✓	✓	✓

Unlimited Night & Weekend Minutes				
Domestic Long Distance Included				
Web Browsing	\$1.99/MB	\$1.99/MB	Unlimited	Unlimited
Text Messaging	\$0.20/Message	Unlimited	Unlimited	Unlimited
Picture & Video Messaging	\$0.25/Message	Unlimited	Unlimited	Unlimited
Mobile Email _	—	—		
V CAST VPak _	—	—	—	
VZ Navigator _	—	—	—	

*Available on select phones only

Other Individual Plans

Messaging only

Unlimited messaging without voice minutes for one low monthly price.

[Shop Now](#)

65 Plus

A plan designed to meet the needs of customers 65 and older.

[Shop Now](#)

Push To Talk Only

Unlimited 1-to-1 and Group Push To Talk calling.

[Shop Now](#)

Nationwide Plus Canada

The perfect plan for frequent travelers to Canada.

[Shop Now](#)

Check out all of your options

View all calling plans

[Shop Now](#)



Residential
Business
Wireless

Family SharePlans®



PlanBuilderSM



Build the Family SharePlan that'll keep everybody happy. Including your wallet.

Start Building!













Introducing Friends & Family.®

Introducing Friends & Family. Save minutes and money. Unlimited calling to 10 out-of-network numbers, even landlines, on any Nationwide Family SharePlan with 1,400 Anytime Minutes or more. Plus, as always, get America's Largest Mobile-to-Mobile Calling Family. 80 million strong. All at no extra cost.

The best value in wireless is only on the network.

Plans

	Basic Plans	Select Plans	Connect Plans	Premium Plans*
Monthly Access	Starting at \$69.99 / 2 lines	Starting at \$99.99 / 2 lines	Starting at \$119.99 / 2 lines	Starting at \$139.99 / 2 lines
Monthly Anytime Minutes	Starting at 700	Starting at 700	Starting at 700	Starting at 700
Friends & Family -	10 numbers included on plans with 1400 Anytime Minutes or more	10 numbers included on plans with 1400 Anytime Minutes or more	10 numbers included on plans with 1400 Anytime Minutes or more	10 numbers included on plans with 1400 Anytime Minutes or more
Unlimited Mobile to Mobile Minutes	✓	✓	✓	✓
Unlimited Night &	✓	✓	✓	✓

Weekend Minutes				
Domestic Long Distance Included				
Web Browsing	\$1.99/MB	\$1.99/MB	Unlimited	Unlimited
Text Messaging	\$0.20/Message	Unlimited	Unlimited	Unlimited
Picture & Video Messaging	\$0.25/Message	Unlimited	Unlimited	Unlimited
Mobile Email _	—	—		
V CAST VPak _	—	—	—	
VZ Navigator _	—	—	—	

*Available on select phones only

Other Family Plans

65 Plus

A plan designed to meet the needs of customers 65 and older.

[Shop Now](#)

Nationwide Plus Canada

The perfect plan for frequent travelers to Canada.

[Shop Now](#)

Check out all of your options

View all calling plans

[Shop Now](#)



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[Wireless](#)

VERIZON WIRELESS PREPAID

- **Pay only on the days you use it.**
 Didn't use it on Monday, then don't pay anything on Monday.
- **Variety of new plans available to fit your lifestyle and budget.**
- **Unlimited Mobile to Mobile Calling with over 80 million Verizon Wireless customers.**
- **No credit checks, long-term contracts or deposits.**
- **Great features like VZ Navigator and V CAST Music with Rhapsody.**

Prepaid Coverage Maps:

[National map](#)

[Regional map](#)

Included Features:

[Get the Details](#)

Select a Plan:	<input type="radio"/> Unlimited Talk	<input type="radio"/> Plus	<input type="radio"/> Core	<input type="radio"/> Basic
Daily Access (only on days used)	\$3.99	\$1.99	\$0.99	\$0.00
Mobile to Mobile Calling (with Verizon Wireless customers)	Unlimited	Unlimited	Unlimited	25¢Min
Night & Weekend Minutes (per minute)	Unlimited	Unlimited	10¢	
Each Additional Minute (For all other calls)	Unlimited	5¢	10¢	
Text Messaging Rates (per message sent & received)	1¢	5¢	10¢	20¢Text Message

Night Minutes: 9:01p.m - 5:59am; Weekend Minutes: 12:00am Saturday - 11:59p.m. Sunday

[View International Calling and Text Messaging Rates and Locations](#)

Refill Expiration (once applied to the account)

- \$15-\$29.99 expires in 30 days
- \$30-\$74.99 expires in 90 days
- \$75-\$99.99 expires in 180 days
- \$100 or more expires in ONE YEAR!

Brochures: [English](#) | [Spanish](#)

ADDITIONAL CALLING PLAN INFORMATION

- **NEW! Messaging Bundles Available**

- **\$20/month for Unlimited Messaging to anyone on any network in the U.S.***
- **\$10/month for Unlimited Mobile to Mobile Messaging with Verizon Wireless customers PLUS 250 additional messages***
- V CAST Music with Rhapsody - 99¢ / song via PC; \$1.99 / song via phone; 99¢ download fee**
- Ringback Tones - 99¢ per month & \$1.99 per Ringback Tone/Year
- Picture and Video Messaging - 25¢ per message
- Mobile Web - 99¢ per day of use (24-hour period)
- Domestic Long Distance Included (airtime charges apply)
- Domestic Roaming Rate is 20¢ Per Minute
- International Text Messaging - 25¢ per message sent, messages received are same as calling plan
- International Roaming – Voice Calls
 - 69¢/min in Puerto Rico, Canada & US Virgin Islands
 - 99¢/min in Mexico
 - \$1.99/min in Bermuda
- International Roaming – Text Messaging
 - 50¢ per message sent
 - 5¢ per message received
- 411 Search - \$1.49 per call plus airtime
- Up to \$25 activation fee may apply.

* Additional and Unlimited Messages apply when sending and receiving: (i) Instant Messages, Text Alerts and Picture and Video Messaging Portal Messages; (ii) Messages with non-Verizon Wireless customers in the United States or participating networks in Canada, Mexico and Puerto Rico; or (iii) via email. Unlimited Messages also include Mobile to Mobile Messages with Verizon Wireless Customers. For Additional Messages, overage Messaging rates default to those of your Calling Plan. Premium Messaging programs and International Messaging not included.

** A 99¢ download fee applies in addition to song price on 1st purchase in any 24-hour period - (phone purchases only). For songs purchased from the phone, a second copy of the song is available for download from the V CAST Music with Rhapsody Online Store account on your PC. Browsing, previewing, and downloading music on your phone will not use airtime. See Prepaid Customer Agreement brochure for complete terms and conditions.

Mobile to Mobile, Night Minutes, Weekend Minutes and Per-Minute Rate are for use from within the Verizon Wireless Prepaid Rate and Coverage Area. Daily Access will be charged and deducted from your account only on days you make or receive calls and is valid until 11:59 p.m. Daily Access of \$0.99, \$1.99 or \$2.99, calls rated at per minute rate and other charges for available services on your prepaid plan may deplete balance prior to its expiration. You will not be able to make or receive voice calls if you do not have the amount required for your daily access. Your account balance will expire at 12:01 a.m. on the day stated at the time of replenishment. To carry your balance forward, simply refill your account before your expiration date. If balance expires, unused portion will be forfeited. Verizon Wireless will suspend your service when your account reaches \$0 or your account reaches the expiration date. Unlimited Mobile to Mobile, Night and Weekend Minutes are not available when your account has been suspended. Limit of 2 calling plan changes in a 30-day period.

Important Information:

All terms, conditions and obligations of the Verizon Wireless Prepaid Customer Agreement and Calling Plan, which cover all the details of your prepaid service, shall govern the terms of your service. Please read and understand this material before activating or using your phone. Verizon Wireless calling plans, rate areas, agreement provisions, business practices, procedures and policies are subject to change as specified in the Verizon Wireless Prepaid Customer Agreement. Our liability is significantly limited. Customers must replenish their account by providing Verizon Wireless with another payment. Any balance remaining at expiration will be removed from the account. Your wireless number is subject to termination after the expiration period, at which time up to a \$35 account activation fee may apply to re-establish service. Existing Verizon Wireless prepaid customers will forfeit any unused bonus minutes in their account when changing to a prepaid Calling Plan.

You will forfeit the money in your account if you activated service without a Refill Card and did not make a call within 60 days. You must initialize the account. If activating the account with a Refill Card, the card is not valid unless initialized (using the PIN) by the date marked on the back of the card.

Toll and airtime free numbers are **911**, **#PAY (#729)** and ***611**. If a charge depends on an amount of time used, we'll round up any fraction of a minute to the next full minute. Time starts when you first press **SEND** or the call connects to a network on outgoing calls and when the call connects to a network (which may be before it rings) on incoming calls. Time may end several seconds after you press **END** or the call otherwise disconnects. For calls that are made on our network, we only bill for calls that connect (which includes calls answered by machines). Charge per call for 411 Search may vary when not in the Verizon Wireless Prepaid Rate and Coverage Area.

Service availability dependent on phone model. Prepaid pricing not available with analog-only phones. Some Verizon Wireless services and features require a CDMA tri-mode or All-Digital phone with Verizon Wireless software. Included features and services may not be available when outside the Prepaid Rate and Coverage Area. V CAST (Video & Mobile TV), New Every Two®, Extended Warranty, Wireless Phone Protection, Total Equipment Coverage, Roadside Assistance, Detailed Billing and Enhanced Voice Mail are not available on the Verizon Wireless Prepaid Calling plans. Please see the Verizon Wireless Prepaid brochures for full details of the prepaid service.

Verizon Wireless Mobile to Mobile Calling

If Caller ID is not present or Caller ID Block is initiated, Mobile to Mobile does not apply to incoming calls and will apply to outgoing calls only. Mobile to Mobile is not available to customers whose wireless exchange restricts the delivery of Caller ID or with fixed wireless devices with usage substantially from a single cell site. Mobile to Mobile does not apply if call forwarding or no answer/busy transfer features are activated or to data usage, calls to check your voice mail and calls to Verizon Wireless customers using Airfone Service or any of the VZGlobal services.

Get It Now

Use of Get It Now is subject to the Get It Now License and User Agreements. An approved Verizon Wireless Prepaid Get It Now-capable phone and a connection in the Prepaid All-Digital Rate and Coverage Area is required. Not all applications available with Verizon Wireless Prepaid Calling Plans. Additional fees apply. See www.verizonwireless.com/getitnow for more information. For Mobile Web, the services are charged at 99¢ per day only on the days it is used. You will have unlimited use of the services for a 24-hour period. Coverage limitations in maps at www.verizonwireless.com/coveragelocator

Refunds

REFUNDS WILL BE GRANTED WITHIN 30 DAYS OF THE ORIGINAL DATE OF PURCHASE WITH THE ORIGINAL SALES RECEIPT. AT THE TIME OF THE RETURN, THE CUSTOMER WILL RECEIVE A FULL REFUND FOR THE AMOUNT OF THE EQUIPMENT ONLY.

Connecticut Customers: If you have any questions about your bill or concerns about your service, please call Customer Care at: 1-888-294-6804 or dial *611 from your wireless phone. If you are a Connecticut customer and we cannot resolve your issue, you have the option of contacting the Department of Public Utility Control (DPUC): Online: www.state.ct.us/dpuc Phone: 866-381-2355; Mail: Connecticut DPUC, 10 Franklin Square, New Britain, CT 06051.

Last Update 2/16/09



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[Email](#) | [Email & Messaging](#)

PDA/Smartphone Nationwide Email

A bundled package with voice and wireless data for quick and easy remote access to email and attachments. Introducing Friends & Family®. Unlimited calling to and from any 5 numbers on any network in America. [Learn More](#)

- Data usage from within the National Enhanced Services and the Extended National Enhanced Services Rate and Coverage Areas
- Data Access for Email
- Unlimited Calling to all Verizon Wireless Customers
- Unlimited Night & Weekend Minutes
- No Domestic Long Distance Charges

[View All Included Features](#)

[Compare All Individual Plans](#)

Monthly Anytime Minutes		Monthly Access	Per-Minute Rate After Allowance
<input type="radio"/> 450 Minutes		\$79.99	\$0.45
<input type="radio"/> 900 Minutes	with unlimited calling to and from 5 Friends & Family numbers	\$99.99	\$0.40
<input type="radio"/> 1350 Minutes	with unlimited calling to and from 5 Friends & Family numbers	\$109.99	\$0.35
<input checked="" type="radio"/> Unlimited Minutes		\$129.99	\$0.00

Calling Plan Information

Important Calling Plan Information

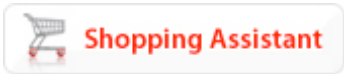
Anytime Minutes, Mobile to Mobile, Night & Weekend Minutes and Per-Minute Rate are for use from within the Nationwide Rate and Coverage Area. Data usage is for use within the National Enhanced Services Rate and Coverage Area.

- Unlimited Domestic Long Distance. (Airtime applies.)



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Select a Plan



[Email](#) | [Email & Messaging](#)

PDA/Smartphone Nationwide Email & Messaging
A bundled package with voice and wireless data for quick and easy remote access to email and attachments. Plus Unlimited Messaging with anyone in the U.S. on any network. Introducing Friends & Family®. Unlimited calling to and from any 5 numbers on any network in America.
[Learn More](#)

- Unlimited Text, Picture, Video & Instant Messaging
- Data usage from within the National Enhanced Services and the Extended National Enhanced Services Rate and Coverage Areas
- Data Access for Email
- Unlimited Calling to all Verizon Wireless Customers
- Unlimited Night & Weekend Minutes
- No Domestic Long Distance Charges

[View All Included Features](#)

[Compare All Individual Plans](#)

Monthly Anytime Minutes		Monthly Access	Per-Minute Rate After Allowance
<input type="radio"/> <u>450</u> Minutes		\$99.99	\$0.45
<input type="radio"/> <u>900</u> Minutes	with unlimited calling to and from 5 Friends & Family numbers	\$119.99	\$0.40
<input type="radio"/> <u>1350</u> Minutes	with unlimited calling to and from 5 Friends & Family numbers	\$129.99	\$0.35
<input checked="" type="radio"/> <u>Unlimited</u> Minutes		\$149.99	\$0.00

Calling Plan Information

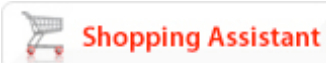
Important Calling Plan Information

Anytime Minutes, Mobile to Mobile, Night & Weekend Minutes and Per-Minute Rate are for use from within the Nationwide Rate and Coverage Area. Data usage is for use within the National Enhanced Services Rate and Coverage Area.



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[Wireless](#)

Select a Plan



[PDA & Smartphone Email](#)

PDA/Smartphone

- Securely send and receive emails, plus get real-time calendar, contact and task updates from your Smartphone.
- Unlimited Data Usage within NationalAccess or BroadbandAccess service area

[View All Included Features](#)

Monthly Allowance	Monthly Access	Per-Minute Rate
<u>Unlimited Data Usage</u>	\$49.99	\$0.25

Data usage is within NationalAccess or BroadbandAccess Service Area. Voice usage in the Nationwide Rate and Coverage Area is \$0.25 per minute.

Calling Plan Information

Additional Calling Plan Information:

International Long Distance

Rates vary by market. See www.verizonwireless.com/international for availability and rates.

411 Connect®

\$1.49 per call plus airtime

Required Equipment

Verizon Wireless BlackBerry Handheld

Required Contract Terms, Activation Fees and Early Termination Fee

- Month-to-month, one- or two-year minimum term required per line — \$35 activation fee per line, except FamilyShare additional lines, \$25 for 2-year agreements.
- Activation fees may vary or be waived for business customers that have a Major Account Agreement with Verizon Wireless.
- Early Termination Fee — \$175 per line for one- or two-year minimum terms.

Friends & Family®

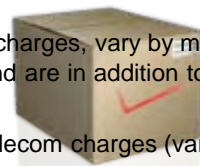
Taxes, Surcharges and Fees

- Tolls, taxes, surcharges and other fees, such as E911 and gross receipt charges, vary by market and as of April 1, 2009, add between 5% and 37% to your monthly bill and are in addition to your monthly access fees and airtime charges.
- Monthly Federal Universal Service Fund Charge (USF) and international telecom charges (varies quarterly based on FCC rate) is 12.9% per line.
- The Verizon Wireless monthly regulatory charges are 7¢ per line.

PlanBuilder SM

Build the Family Share Plan

Free Activation & Free Overnight Shipping

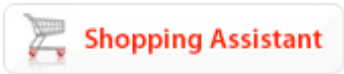


Save the activation fee when



[Residential](#)
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Select a Plan



[Email](#) | [Email & Messaging](#)

BlackBerry® Nationwide Email

A bundled package with voice and wireless data for quick and easy remote access to email over your BlackBerry handheld. Introducing Friends & Family®. Unlimited calling to and from any 5 numbers on any network in America. [Learn More](#)

- Data usage from within the National Enhanced Services and the Extended National Enhanced Services Rate and Coverage Areas
- Data Access for Email
- Unlimited Calling to all Verizon Wireless Customers
- Unlimited Night & Weekend Minutes
- No Domestic Long Distance Charges

[View All Included Features](#)

[Compare All Individual Plans](#)

Monthly Anytime Minutes		Monthly Access	Per-Minute Rate After Allowance
<input type="radio"/> 450 Minutes		\$79.99	\$0.45
<input type="radio"/> 900 Minutes	with unlimited calling to and from 5 Friends & Family numbers	\$99.99	\$0.40
<input type="radio"/> 1350 Minutes	with unlimited calling to and from 5 Friends & Family numbers	\$109.99	\$0.35
<input checked="" type="radio"/> Unlimited Minutes		\$129.99	\$0.00

Calling Plan Information

Important Calling Plan Information

Anytime Minutes, Mobile to Mobile, Night & Weekend Minutes and Per-Minute Rate are for use from within the Nationwide Rate and Coverage Area. Data usage is for use within the National Enhanced Services Rate and Coverage Area.

- Unlimited Domestic Long Distance. (Airtime applies.)



[Residential](#)
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Select a Plan



[Email](#) | [Email & Messaging](#)

BlackBerry® Nationwide Email & Messaging

A bundled package with voice and wireless data for quick and easy remote access to email over your BlackBerry handheld. Plus Unlimited Messaging with anyone in the U.S. on any network. Introducing Friends & Family®. Unlimited calling to and from any 5 numbers on any network in America. [Learn More](#)

- Unlimited Text, Picture, Video & Instant Messaging
- Data usage from within the National Enhanced Services and the Extended National Enhanced Services Rate and Coverage Areas
- Data Access for Email
- Unlimited Calling to all Verizon Wireless Customers
- Unlimited Night & Weekend Minutes
- No Domestic Long Distance Charges

[View All Included Features](#)

[Compare All Individual Plans](#)

Monthly Anytime Minutes		Monthly Access	Per-Minute Rate After Allowance
<input type="radio"/> <u>450</u> Minutes		\$99.99	\$0.45
<input type="radio"/> <u>900</u> Minutes	with unlimited calling to and from 5 Friends & Family numbers	\$119.99	\$0.40
<input type="radio"/> <u>1350</u> Minutes	with unlimited calling to and from 5 Friends & Family numbers	\$129.99	\$0.35
<input checked="" type="radio"/> <u>Unlimited</u> Minutes		\$149.99	\$0.00

Calling Plan Information

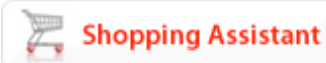
Important Calling Plan Information

Anytime Minutes, Mobile to Mobile, Night & Weekend Minutes and Per-Minute Rate are for use from within the Nationwide Rate and Coverage Area. Data usage is for use within the National Enhanced Services Rate and Coverage Area.



[Residential](#)
[Business](#)
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Select a Plan



[BlackBerry Email](#)

BlackBerry® Solution

- Quick and easy access to email, contacts, calendar and task list while on the go. BlackBerry device required.
- Unlimited Data Usage within NationalAccess or BroadbandAccess service area

[View All Included Features](#)

Monthly Allowance	Monthly Access	Per-Minute Rate
<u>Unlimited Data Usage</u>	\$49.99	\$0.25

Data usage is within NationalAccess or BroadbandAccess Service Area. Voice usage in the Nationwide Rate and Coverage Area is \$0.25 per minute.

Calling Plan Information

Additional Calling Plan Information:

International Long Distance

Rates vary by market. See www.verizonwireless.com/international for availability and rates.

411 Connect®

\$1.49 per call plus airtime

Required Equipment

Verizon Wireless BlackBerry Handheld

Required Contract Terms, Activation Fees and Early Termination Fee

- Month-to-month, one- or two-year minimum term required per line — \$35 activation fee per line, except FamilyShare additional lines, \$25 for 2-year agreements.
- Activation fees may vary or be waived for business customers that have a Major Account Agreement with Verizon Wireless.
- Early Termination Fee — \$175 per line for one- or two-year minimum terms.

Friends & Family®

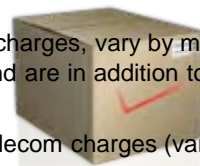
Taxes, Surcharges and Fees

- Tolls, taxes, surcharges and other fees, such as E911 and gross receipt charges, vary by market and as of April 1, 2009, add between 5% and 37% to your monthly bill and are in addition to your monthly access fees and airtime charges.
- Monthly Federal Universal Service Charge (FUSC) and international telecom charges (varies quarterly based on FCC rate) is 12.9% per line.
- The Verizon Wireless monthly regulatory charges 7¢ per line.

PlanBuilder™

Build the Family Share Plan

Free Activation & Free Overnight Shipping



Save the activation fee when



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[Business](#)
[Wireless](#)

Select a Plan



[Email](#) | [Email & Messaging](#)

BlackBerry® Nationwide Email & Messaging

A bundled package with voice and wireless data for quick and easy remote access to email over your BlackBerry handheld. Plus Unlimited Messaging with anyone in the U.S. on any network. Introducing Friends & Family®. Unlimited calling to and from any 5 numbers on any network in America. [Learn More](#)

- Unlimited Text, Picture, Video & Instant Messaging
- Data usage from within the National Enhanced Services and the Extended National Enhanced Services Rate and Coverage Areas
- Data Access for Email
- Unlimited Calling to all Verizon Wireless Customers
- Unlimited Night & Weekend Minutes
- No Domestic Long Distance Charges

[View All Included Features](#)

[Compare All Individual Plans](#)

Monthly Anytime Minutes		Monthly Access	Per-Minute Rate After Allowance
<input type="radio"/> <u>450</u> Minutes		\$99.99	\$0.45
<input type="radio"/> <u>900</u> Minutes	with unlimited calling to and from 5 Friends & Family numbers	\$119.99	\$0.40
<input type="radio"/> <u>1350</u> Minutes	with unlimited calling to and from 5 Friends & Family numbers	\$129.99	\$0.35
<input checked="" type="radio"/> <u>Unlimited</u> Minutes		\$149.99	\$0.00

Calling Plan Information

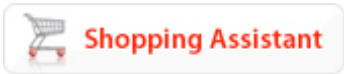
Important Calling Plan Information

Anytime Minutes, Mobile to Mobile, Night & Weekend Minutes and Per-Minute Rate are for use from within the Nationwide Rate and Coverage Area. Data usage is for use within the National Enhanced Services Rate and Coverage Area.



[Residential](#)
[Business](#)
[Wireless](#)

Select a Plan



[Email](#) | [Email & Messaging](#)

BlackBerry® Nationwide Email

A bundled package with voice and wireless data for quick and easy remote access to email over your BlackBerry handheld. Introducing Friends & Family®. Unlimited calling to and from any 5 numbers on any network in America. [Learn More](#)

- Data usage from within the National Enhanced Services and the Extended National Enhanced Services Rate and Coverage Areas
- Data Access for Email
- Unlimited Calling to all Verizon Wireless Customers
- Unlimited Night & Weekend Minutes
- No Domestic Long Distance Charges

[View All Included Features](#)

[Compare All Individual Plans](#)

Monthly Anytime Minutes		Monthly Access	Per-Minute Rate After Allowance
<input type="radio"/> 450 Minutes		\$79.99	\$0.45
<input type="radio"/> 900 Minutes	with unlimited calling to and from 5 Friends & Family numbers	\$99.99	\$0.40
<input type="radio"/> 1350 Minutes	with unlimited calling to and from 5 Friends & Family numbers	\$109.99	\$0.35
<input checked="" type="radio"/> Unlimited Minutes		\$129.99	\$0.00

Calling Plan Information

Important Calling Plan Information

Anytime Minutes, Mobile to Mobile, Night & Weekend Minutes and Per-Minute Rate are for use from within the Nationwide Rate and Coverage Area. Data usage is for use within the National Enhanced Services Rate and Coverage Area.

- Unlimited Domestic Long Distance. (Airtime applies.)



[Residential](#)
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Select a Plan



Shopping Assistant

[High Speed Access](#)

Mobile Broadband

Stay productive, responsive and connected while on the go, right from your laptop at average download speeds of 600 Kbps – 1.4 Mbps and at average upload speeds of 500 Kbps – 800 Kbps.*

Enjoy access for Internet browsing, email and intranet access.

Mobile Broadband Data Usage:

[Choose the Mobile Broadband Plan That Works Best For You](#)

[View All Included Features](#)

Monthly Allowance	Monthly Access	Per MB Rate After Allowance
<input type="radio"/> <u>250 MB</u>	\$39.99	\$0.10
<input checked="" type="radio"/> <u>5GB (5,120 MB)</u>	\$59.99	\$0.05

*Mobile Broadband speed claim based on our network tests with 5 MB FTP data files without compression. Actual speeds and coverage may vary. Other data services (Quick 2 NetSM dial-up connections) at \$0.25 per minute.

Calling Plan Information

Additional Plan Information:

Required Equipment

National Access or Mobile Broadband-capable device

Required Minimum Term, Activation Fees, and Early Termination Fee

- Month-to-month, one- or two-year minimum term required per line.
- Activation Fee: \$35 per line.
- Activation fees may vary or be waived for business customers that have a Major Account Agreement with Verizon Wireless.
- Early Termination: Up to \$175 fee per line for one- or two-year minimum terms.
- In the Canadian Broadband and Canadian Enhanced Services Rate and Coverage Areas, usage will be charged at a rate of \$0.002 per KB or \$2.05 per MB.
- In the Mexican Enhanced Services Rate and Coverage Area, usage will be charged at a rate of \$0.005 per KB or \$5.12 per MB.

Friends & Family[®] • In the Bermuda, China, Dominican Republic, India and Israel Enhanced Services Rate and

Free Activation & Free

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AT&T, the nation's fastest 3G Network, offers a variety of individual cell phone plans where you'll enjoy:

- **Unlimited calling to other AT&T wireless customers with Mobile to Mobile**
- **No roaming or long distance charges**
- **Saving unused minutes with Rollover®**
- **Unlimited calling on Nights and Weekends**

To order by phone, call 1-888-333-6651 (special online pricing and some devices may not be available)

On the road again? [Check out our national coverage](#) in areas you plan to visit.

[View national map](#)**Nation Plans**

Minutes	Monthly Cost	Rollover®	Unlimited Nights/Weekends*	Unlimited Mobile to Mobile	Additional Details
450	\$39.99	✓	Includes 5000	✓	View Details
900	\$59.99	✓	✓	✓	View Details
1350	\$79.99	✓	✓	✓	View Details
Unlimited	\$99.99		✓	✓	View Details

Senior Plan - Available to customers 65 and older.

Minutes	Monthly Cost	Rollover®	Unlimited Nights/Weekends*	Unlimited Mobile to Mobile	Additional Details
200	\$29.99		Includes 500	✓	View Details Must be 65 or older Verified at checkout

*Night and Weekend minutes will be used before Mobile to Mobile minutes. Unlimited weekday minutes from 9pm to 6am and unlimited minutes on weekends.

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FamilyTalk Cell Phone Plans

FamilyTalk plans offer a range of cell phone plan options that let you share minutes and save. Use your minutes between two lines or add additional lines for one low price and enjoy:

- Unlimited calling on **Nights and Weekends** for all lines
- Unlimited calling to other AT&T wireless customers with **Mobile to Mobile**
- No roaming or long distance charges
- Saving unused minutes with **Rollover®**

To order by phone, call 1-888-333-6651 (special online pricing and some devices may not be available)

On the road again? [Check out our national coverage](#) in areas you plan to visit.

[View national map](#)

Nation Plans

Shared Minutes	Monthly Cost (First 2 lines)	Cost per Addl. Line	Rollover®	Unlimited Nights/Weekends*	Unlimited Mobile to Mobile	Additional Details
550 (Max 3 lines)	\$59.99	9.99	✓	✓	✓	View Details
700 (Max 5 lines)	\$69.99	9.99	✓	✓	✓	View Details
1400 (Max 5 lines)	\$89.99	9.99	✓	✓	✓	View Details
2100 (Max 5 lines)	\$109.99	9.99	✓	✓	✓	View Details
3000 (Max 5 lines)	\$149.99	9.99	✓	✓	✓	View Details
4000 (Max 5 lines)	\$199.99	9.99	✓	✓	✓	View Details
Unlimited (Max 5 lines)	\$199.99	99.99		✓	✓	View Details

*Night and Weekend minutes will be used before Mobile to Mobile minutes. Unlimited weekday minutes from 9pm to 6am and unlimited minutes on weekends.

[Other Monthly Charges](#) | [Plan Terms](#) | [Online Pricing](#) | [Return Policy](#)
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Prepaid Cell Phone Plans

No Annual Contract - No Credit Check - No Deposit - No Surprise Bills

The benefits of wireless – without the commitment

Pay As You Go
Prepay whenever you want

« choose between »

Pick Your Plan
Prepay once a month



[Add Pay As You Go Plan](#)

Key Benefits:

- \$15 airtime included on [select phones](#)
- Unlimited calling to anyone nationwide on a select plan
 - Pay only on days used
- Prepaid without compromise – on the network you can trust
- Unlimited Text Messaging option available
- Unlimited Night & Weekend Minutes option available
- Your choice of three rate plans options
- [Pay As You Go Rewards Program](#) – get a bonus for every \$100 you spend refilling your account

Both Options Feature:

- | | | |
|---|--|---|
| ✓ | Unlimited Talk to AT&T's wireless customers (on most plans) | ✓ |
| ✓ | Rollover® Balance™ allows you to carry balance over month to month | ✓ |
| ✓ | No domestic roaming or long distance fees | ✓ |
| ✓ | Easily manage your account online | ✓ |
| ✓ | Cancel anytime | ✓ |



[Add Pick Your Plan](#)

Key Benefits:

- Choose one of four rate plans that best meets your needs
- Night & Weekend Minutes included in most plans
- AutoPay for your rate plan once a month
- Pay with your credit card, debit card or checking account

*Daily access fee of \$1.00 for the Pay As You Go Unlimited Talk plan is assessed each day you use your phone for a voice call and is debited from your account balance the day after you use your phone.

**Not available on the 25¢/min Pay As You Go plan.

*** No roaming or long distance fees across our national service area.

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GoPhone® Pay As You Go

All the benefits of wireless, without the surprises. This prepaid cell phone plan allows you to simply pay in advance for what you need. No long-term contracts, credit checks or deposits.

Highlights

- \$15 airtime included on [select phones](#)
- New! Unlimited calling to anyone nationwide on a select plan
 - Pay only on days used
- Prepaid without compromise on the network you can trust
- No annual contract. No credit check.
- Refill balance 24/7 with prepaid cards, online, or dial 611
- Track your usage – you'll receive a text message with your updated balance after each call

AT&T Advantages

- Rollover® Balance™ lets you carry over your unused account balance when you refill before your balance expires, up to the account maximum.
- No long distance or roaming fees across our national service area.
- UNLIMITED Text Messaging and Nights & Weekends with Data options on select plans. View [Pay As You Go feature package details](#).

Reward Yourself. Pay As You Go Rewards gives you a bonus for every \$100 you spend refilling your account. [View Pay As You Go Rewards](#).

Name of Plan	Anytime Minutes	Daily Access Fee*	Mobile to Mobile Minutes	Nationwide Long Distance	Rollover® Balance	Additional Features
Unlimited Calling Plan	\$.00 per minute	\$3.00 per day, ONLY on days you use your phone	Unlimited	Included	Included	View Details
Mobile to Mobile Plan	\$.10 per minute	\$1.00 per day, ONLY on days you use your phone	Unlimited	Included	Included	View Details
Simple Rate Plan	\$.25 per minute	N/A		Included	Included	View Details

Plan Terms

In certain areas, [taxes or fees relating to E911](#) are debited from your account balance monthly.

*Daily Access Fee:

Daily access fee is assessed each day you use your phone for a voice call and is normally debited from your account balance on the first call of the day.

Add Funds to Your Account

For your convenience 24/7, you can add funds to your account in a variety of ways:

- Buy prepaid refill cards at [AT&T wireless stores](#)
- Go to [att.com/mygophone](#)
- Call 611 from your wireless phone
- Purchase Pay As You Go refill cards at any one of more than 200,000 authorized retail locations

888 Star Refill

Now there's a new and easier way for you to add airtime to your prepaid account:

1. Buy prepaid refill cards at [AT&T wireless stores](#)
2. Locate the PIN number associated with the prepaid card. In many cases, the PIN will be on the back of your card or printed on your receipt.
3. With most refill cards, add PIN value by using prepaid phone keypad: enter *888* followed by PIN number, then the # key (*888*PIN NUMBER#) and press SEND. Or refer to the instructions on back of the card or printed on PIN receipt.
4. Once you have entered your prepaid card number you will be informed of your new balance and expiration date.

Pay As You Go cards are available in these amounts:

Card Denomination Expiration Period

To order by phone, call 1-888-4GOPHONE (special online pricing may not be available)

[View national map](#)

\$15	30 days
\$25	90 days
\$50	90 days
\$75	90 days
\$100	365 days

One-year expiration period on \$100 refill cards!

Included Features

Basic Voice Mail*	Caller ID
Call Forwarding*	Three-Way Calling*
Call Waiting*	Nationwide Long Distance
International Calling^	

Check the [International Long Distance Rates table](#) for your travel destination.

Enhanced Features

Save on Night & Weekend minutes, Messaging & Data with new Feature Packages!! [Click here for details.](#)

Text and Instant Messaging**

When you can't talk, exchanging text messages is a quick and simple way to communicate. Just type your message with your wireless device keypad and send. Plus, enjoy instant messaging with the most popular IM communities. \$0.20 per message sent/received.

International Text Messaging**

Send international text messages from the US to friends, family, co-workers around the world. \$0.25 per message sent/\$0.20 per message received.

Ringtones, Games and Graphics**

Personalize your phone with personal ringtones, unique graphics and exciting games. Plus, check out the exciting new take on tones: Answer Tones! Replace the standard ring your friends hear when they call with a custom tone that'll be music to their ears.

[Learn more about AnswerTones](#)

Additional charges apply.

Data**

A whole world of information and entertainment is at your fingertips with a data package. Get weather, news and sports scores delivered right to your phone. Even better, you control what you receive when you personalize your home page by placing your favorite categories and headlines right up front. Surfing the Web from your phone has never been easier.

\$0.01 per KB.

Multimedia Messaging**

Instantly and easily share photos and videos-complete with a personalized voice or text message-right from your wireless phone. Pay per message-\$0.25 per message

Data Service Terms

Roaming in Mexico

Now you can use your GoPhone service when you travel to Mexico!

No additional feature is required to roam in Mexico - all GoPhone customers are automatically enrolled & eligible.

Roaming charges in Mexico are as follows:

- Standard airtime rate - \$0.99 per minute
- Text Messaging - \$0.50 per message sent/\$0.20 per message received
- Instant Messaging - \$0.50 per message sent/received
- Data - \$0.0195 per KB
- Picture Messaging - \$1.30 per message sent/\$0.25 per message received

To reach customer service when roaming in Mexico dial 611 or + 1 (408) 962-1025.

[View roaming coverage in Mexico](#)

[Learn more about roaming in Mexico](#)

*Airtime charges apply for features usage.

** Compatible phone required.

^Airtime and international long distance rates apply.

For assistance placing your order by phone, call 1-888-4GoPhone® (1-888-446-7466). Special online pricing may not be available.

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- [PDA/Smartphone Plans](#)
- [Laptop Connect Plans](#)

GoPhone® Pick Your Plan

All the benefits of wireless, without the surprises. This prepaid cell phone plan allows you to simply pay in advance for what you need. No long-term contracts, credit checks or deposits.

Highlights

- AutoPay for your rate plan once a month
- Pay with your credit card, debit card or checking account
- Track your usage—You will receive a text message with your updated balance after each call.

AT&T Advantages

- Rollover® Balance™ lets you carry over your unused account balance when you refill before your balance expires, up to the account maximum.
- No domestic long distance or roaming fees across our national service area.
- Unlimited Text Messaging option. Messaging and Data value packages available
- Unlimited Talk (on most plans).

To order by phone, call 1-888-4GOPHONE (special online pricing may not be available)

[View national map](#)

Name of Plan	Monthly Cost	Anytime Minutes(up to)*	Cost Per Minute	Night and Weekend Minutes**	Mobile to Mobile Minutes	Nationwide Long Distance	Rollover® Balance	Additional Features
Pick Your Plan \$29.99	\$29.99	200	\$.15	0		Included	Included	View Details
Pick Your Plan \$39.99	\$39.99	300	\$.133	500	Unlimited	Included	Included	View Details
Pick Your Plan \$49.99	\$49.99	400	\$.125	3000	Unlimited	Included	Included	View Details
Pick Your Plan \$69.99 with Unlimited Talk	\$69.99	650	\$.108	Unlimited	Unlimited	Included	Included	View Details

Plan Terms

In certain areas, [taxes or fees relating to E911](#) are debited from your account balance monthly and will affect the number of minutes available.

*Number of minutes is based on entire account balance being used for voice calls. Use of balance for data, text messaging, directory assistance, ringtones or other items will affect the number of minutes available. In certain areas, taxes or fees relating to E911 are debited from your account balance monthly and will affect the number of minutes available.

**Night and weekend minutes will be used before Mobile to Mobile minutes.

How it Works

Pick the rate plan that fits you best, then set up monthly, automatic payments with your credit card, debit card or checking account. Funds are deducted from your balance each time you make or receive a call or use features such as Text Messaging. If you need to make more calls or use up your balance during the month, just add additional funds to your account at any time—you'll pay the same per minute rate as your plan.

Adding Minutes to Your Account

- You'll receive a voice message indicating you have a low balance when you place a call with less than \$5 in your account.
- When your account reaches \$0, you can add funds or stop using the service until your next scheduled payment.
- If your balance gets low before your next monthly payment, you can add funds in increments of \$15 and \$25 24/7 using your credit/debit card or checking account.
- Online: Visit <http://www.att.com/mygophone>
- By phone: Call 611 from your wireless phone or 1-866-499-7888 from a landline phone

Included Features

Basic Voice Mail*	Caller ID
Call Forwarding*	Three-Way Calling*
Call Waiting*	Nationwide Long Distance
International Calling^	

Enhanced Features

MESSAGING OPTIONS

Text Messaging**

When you can't talk, exchanging text messages is a quick and simple way to communicate. Just type your message with your wireless device keypad and send.

Pay per message -- \$.20 per message sent/received.

Instant Messaging**

Enjoy instant messaging with the most popular IM communities.

Pay per use -- \$.20 per message sent/received.

Picture Messaging**

Instantly and easily share photos and videos-complete with a personalized voice or text message-right from your wireless phone.
Pay per message -- \$0.25 per message sent/received.

Messaging Packages**

Save on text, instant and picture messages with a messaging package.
Messaging Starter -- 200 messages for \$4.99 per month.
Messaging Standard -- 1000 messages for \$9.99 per month.
Unlimited Messaging -- Unlimited messages for \$19.99 per month.

[See All Messaging Packages](#)

International Text Messaging**

Send international text messages from the US to friends, family, co-workers around the world.
Pay per use -- \$0.25 per message sent, \$0.20 per message received.

Data for GoPhone Pick Your Plan**

A whole world of information and entertainment is at your fingertips with Data for GoPhone Pick Your Plan. Get weather, news and sports scores delivered right to your phone. Even better, you control what you receive when you personalize your home page by placing your favorite categories and headlines right up front. Surfing the Web from your phone has never been easier.

Pay per use -- \$0.01 per KB

1 MB Value Package \$4.99 per month

100 MB Value Package \$19.99 per month

Ringtones, Answer Tones™, Games, and Graphics**

Personalize your phone with personal ringtones, unique graphics, and exciting games. Plus, check out the exciting new take on tones: Answer Tones! Replace the standard ring your friends hear when they call with a custom tone that'll be music to their ears.

[Learn more about Ringtones and Downloads](#)

Pay per use -- Additional charges apply.

Picture Messaging**

Instantly and easily share photos and videos-complete with a personalized voice or text message-right from your wireless phone.
Pay per message -- \$0.25 per message

International Long Distance*

Keep in touch with friends, family, and associates who are outside of the U.S.

All Pick Your Plan customers can make international calls at standard international calling rates or choose the AT&T WorldConnect® Package for discounted rates - Great for customers who make frequent international calls!

AT&T WorldConnect® Package: \$3.99 per month

[View International Long Distance Rates](#)

Roaming in Mexico

Now you can use your GoPhone service when you travel to Mexico!

No additional feature is required to roam in Mexico - all GoPhone customers are automatically enrolled & eligible.

Roaming charges in Mexico are as follows:

- Standard airtime rate - \$0.99 per minute
- Text Messaging - \$0.50 per message sent/\$0.20 per message received
- Instant Messaging - \$0.50 per message sent/received
- Data - \$0.0195 per KB
- Picture Messaging - \$1.30 per message sent/\$0.25 per message received

To reach customer service when roaming in Mexico dial 611 or + 1 (408) 962-1025.

[View roaming coverage in Mexico](#)

[Learn more about roaming in Mexico](#)

*Airtime charges apply for features usage.

**Compatible phone required.

^Airtime and international long distance rates apply.

For assistance placing your order by phone, call 1-888-4GoPhone® (1-888-446-7466). Special online pricing may not be available.

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Plan Name	Monthly Cost	Included Data	Additional data	International Data	Additional Features
PDA Personal	\$35.00*	Unlimited	0/KB	0.0195/KB	View Details
*Data Add-on is only \$30.00 if you buy it with an individual or FamilyTalk voice plan.					
PDA Personal + tethering	\$65.00**	5 GB	0.00048/KB	0.0195/KB	View Details
**Data Add-on is only \$60.00 if you buy it with an individual or FamilyTalk voice plan.					

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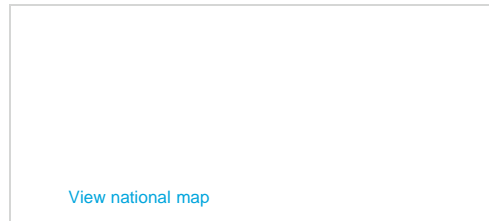


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Plan Name	Monthly Cost	Included Data	Additional data	International Data	Additional Features
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**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Wireless Telecommunications Bureau Seeks
Comment On Commercial Mobile Radio
Services Market Competition

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) WT Docket No. 09-66
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)
)

REPLY COMMENTS OF AT&T INC.

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July 13, 2009

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**Before The
FEDERAL COMMUNICATIONS COMMISSION
445 12th Street, S.W., Washington, DC 20554**

In the Matter of)	
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Wireless Telecommunications Bureau Seeks)	WT Docket No. 09-66
Comment On Commercial Mobile Radio)	
Services Market Competition)	
)	

REPLY COMMENTS OF AT&T INC.

Pursuant to the Public Notice (“*Notice*”) released by the Wireless Telecommunications Bureau (“Bureau”) on May 14, 2009,¹ AT&T Inc. (“AT&T”) submits these reply comments.

INTRODUCTION AND SUMMARY

Searching for signs of effective wireless competition is like looking for hay in a haystack. Whether the focus is market structure, carrier conduct, consumer behavior, or market performance, confirmation of intense rivalry that benefits consumers by expanding and improving service offerings, promoting innovation and lowering prices is everywhere you look. Virtually all Americans can choose among competing carriers that have sunk enormous investments in infrastructure that must be constantly upgraded – a market structure that guarantees rivalrous behavior to attract and retain customers. Even in a weakened economy, wireless entry, expansion and broadband investment are at record levels. Every day brings new and improved services, prices, devices and applications as carriers scramble to optimize and differentiate their offerings. Customer satisfaction levels are the highest ever, and wireless consumers continue to demonstrate that they are well aware of, and willing to take full advantage

¹ Public Notice, *Wireless Telecommunications Bureau Seeks Comment On Commercial Mobile Radio Services Market Competition*, DA 09-1070, WT Docket No. 09-66 (rel. May 14, 2009) (“*Notice*”).

of, their many choices in the marketplace. Prices are falling, output is soaring, coverage and service quality are improving, and the pace of innovation is off the charts. The U.S. wireless industry is the envy of the rest of the developed world: least concentrated, lowest priced, most heavily utilized, and most innovative. Whether one sees the forest or proceeds tree by tree, there is simply no way to characterize this industry as anything but effectively competitive.

Those that claim otherwise and urge wholesale retreat from the regulatory environment that fuels wireless investment and competition do not seriously dispute the competitive facts, which speak for themselves. None urges an alternative definition of “effective competition” or any coherent explanation how the Commission could ignore that *all* of the economic indicators commonly employed to assess the effectiveness of competition point in the same direction: competition that is not just effective, but as intense and dynamic as in any capital-intensive industry anywhere. Instead, they complain that the four largest wireless carriers are fighting *too hard* to satisfy consumers, that this competition puts too much competitive pressure on smaller competitors, and that the Commission simply must put the brakes on this “unfair competition,” sacrificing the enormous consumer benefits it creates. But the few arguments marshaled in support of government neutralization of the competitive process lack any factual, economic or legal basis, and are foreclosed by the Commission’s core public interest mandate, which is to promote competition, not to protect individual competitors *from* competition.

The proponents of increased regulation rest their claims of ineffective wireless competition principally on misguided views of market concentration, claiming that “any HHI level above 1800 in any individual economic area (“EA”) indicates severely limited competition.”² This argument flies in the face of the most basic principles of industrial

² CFA Comments at 5.

economics and decades of court and Commission precedent. The average HHI of the wireless industry has always exceeded 1800 – a level that requires *six* equal-sized competitors. But, as the Commission cautioned when it first reported CMRS HHIs, that is to be expected in an industry with the technological and economic characteristics of wireless.³ Few capital-intensive industries sustain an HHI below 1800, yet many such industries, including wireless, are intensely competitive. Beyond that, the pro-regulation contingent completely misapprehends the relevance of market concentration in a competition analysis. As Dr. Katz explains in his attached declaration, and as the Commission itself has repeatedly recognized, a “high” market concentration alone does not demonstrate a lack of competition but is merely a trigger for further inquiry.⁴ And, in the United States – the world’s least concentrated wireless marketplace, with three or more facilities-based competitors engaging in multi-dimensional competition for the business of virtually all Americans – any such further inquiry unquestionably confirms that customers are enjoying the benefits of intense competition.

Rhetoric about industry “hyper-consolidation” is equally misguided.⁵ The average HHI estimated in the Thirteenth CMRS Report earlier this year was actually lower than reported two

³ See, e.g., *Ninth Report* ¶ 55 (“In industries where the scale of output at which a firm can fully exploit scale economies (the minimum efficient scale) is large relative to potential demand, there will be room in the market for only a small number of firms operating at the lowest possible cost. In theory, therefore, market concentration in such industries will tend to be high relative to industries characterized by greater potential demand or smaller minimum efficient scale”).

⁴ Declaration of Michael Katz, ¶¶ 16-30, attached hereto as Exhibit A (“Katz Declaration”) (“Although widely used in the analysis of competition, measures of concentration suffer from several drawbacks that limit their usefulness or invalidate them as stand-alone indicators of competition”; rather “[a] complete competitive analysis must look beyond market share data and measures of concentration”). See also *Ninth Report* ¶ 55 (“it is worth noting that the economic literature does not provide a theoretical or empirical basis for the existence of any critical threshold level of concentration above which adverse competitive effects are likely”).

⁵ See RTG Comments at 12.

years earlier (and unchanged from the previous year),⁶ because merger activity has been accompanied by a whirlwind of entry and expansion. Moreover, the merger activity that has taken place raised competitive issues only in particular geographic areas, and those issues were fully addressed through divestiture commitments. Tellingly, no commenter even attempts to show any link between the consolidation that has occurred and any real world reduction in the effectiveness of wireless competition.⁷

The competition naysayers do correctly observe that recent consolidation has “disproportionately impacted rural consumers,”⁸ but they are wrong about the direction of the impact. Recent efforts by larger carriers to expand their coverage in rural areas have dramatically *benefited* rural consumers, as the Commission ruled in its orders approving the acquisitions that enabled such expansion.⁹ For example, AT&T’s wireless expansion into rural areas it previously did not serve has greatly increased the choices available to, and competition for the business of, millions of rural consumers. That, in turn, has spurred existing competitors to improve their own offerings, further benefiting rural consumers.

Beyond concentration and consolidation, those advocating a Commission finding of ineffective competition have little to say about actual marketplace conditions. They cannot deny that U.S. wireless prices are declining and are already the lowest in the industrial world by a

⁶ See *Thirteenth Report*, ¶ 46, Table 3.

⁷ See Katz Decl. ¶ 20 (“[T]here is no catch-all theory that relates the strength and nature of competition to market shares and concentration, or to changes in concentration. Levels and trends in concentration have to be interpreted carefully based on the underlying drivers of those levels and trends.”).

⁸ RTG Comments at i.

⁹ See, e.g., *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, et al.*, 23 FCC Rcd. 17444, ¶¶ 119-120 (2008) (“*Verizon/Alltel Order*”) (merger “will benefit rural customers” in multiple ways, “including faster and more extensive deployment of wireless broadband service, seamless national coverage, improved customer care, and a greater variety of services, devices, and service plans”).

wide margin. So they complain that the average U.S. consumer spends a little more on wireless services annually than the average European. But that reflects nothing more than the economic fact that consumption increases when products and services are cheaper. Because wireless service is so much less expensive here, the average American talks nearly five times as much, sends twice as many text messages and is more likely to use a 3G device than the average European,¹⁰ which only confirms that U.S. consumers are reaping enormous benefits from the effective wireless competition that the Commission's longstanding policies have created.

Complaints that many U.S. wireless carriers give their customers the *option* of obtaining a heavily-subsidized handset with pro-rated early termination fees are equally misguided.¹¹ Most customers choose to purchase a subsidized handset and those that do not can buy an unsubsidized handset, bring their own, or choose a prepaid or pay-as-you-go plan. That most consumers prefer a one, or more typically a two, year commitment no more impedes competition than do similar (or longer) commitments in numerous other industries – the automobile industry, to name one example, where leases are generally longer than one or two years. Indeed, industry churn statistics confirm that service contracts neither prevent consumers from switching nor relieve carriers from competitive pressure.

Advocates of re-regulation are thus reduced to hypothesizing criminal conduct: “parallel pricing” conspiracies.¹² These irresponsible (and entirely unsupported) allegations are refuted by the directly observable facts (*e.g.*, wide variation among the many wireless plans) and

¹⁰ See CTIA Comments at 51; Darren Murph, Study Says Americans Send Twice As Many Text Messages As Europeans, Twice As Prone To Thumb Failure, Engadget immobile (Dec. 5, 2008), available at <http://www.engadgetmobile.com/2008/12/05/study-sez-americans-send-twice-as-many-text-messages-as-european>; *Thirteenth Report* ¶ 227.

¹¹ See, *e.g.*, CFA Comments at 14-15.

¹² See *id.* at 8-9.

common sense (conspiracies to reduce prices are decidedly uncommon). There is simply no denying the mountain of evidence of intense price and non-price rivalry among U.S. wireless carriers or the complete absence of contrary evidence.

The naysayers' complaints are no less wide of the mark when it comes to innovation. The Consumer Federation of America, in particular, proclaims that the wireless marketplace is characterized by "explicit barriers to innovation."¹³ Really? Most consumers would identify rapid, dramatic innovation as the *defining* characteristic of the U.S. wireless marketplace. As one commentator recently noted, U.S. wireless consumers are the beneficiaries of a "brutal technology competition that is making the chariot race in Ben Hur look like a stroll in the park,"¹⁴ as all industry participants work frenetically to one-up each other. Competition hit a new level of intensity this past year, as wireless "apps" have taken off in popularity, and online stores proliferate to offer consumers tens of thousands of new ways to make their wireless devices even more useful. Some grumble that not every wireless device has every feature or runs every application and that carriers typically impose some limits on a customer's usage of the bandwidth that all users must share. But product differentiation and quality control are hallmarks of effective competition in the provision of technically complex products and services, not evidence of its absence.

In short, there are no serious arguments that wireless is not effectively competitive. Rather, these arguments are just a pretext for commenters' efforts to advance their own parochial business interests. It should thus come as no surprise that claims of a lack of competition are coupled with proposals to ban exclusive handset offers, extend automatic roaming requirements,

¹³ *See id.* at 2.

¹⁴ Steven Levy, *Speed, Smarts Keep iPhone 3GS at the Front of the Mobile Race*, Wired (June 17, 2009), available at http://www.wired.com/reviews/product/iphone_3gs.

re-impose spectrum caps, and even mandate wireline special access rate reductions. Each of these efforts to avoid the pressures of competition is as meritless as it is out of place here.

First, claims that exclusive handset offerings are hindering wireless competition have it backwards. In competitive markets, firms work hard to differentiate themselves from their rivals. Exclusive offers are a key means of doing so. These arrangements are the fuel that sparks the virtuous cycle of innovation and response. The popularity of the iPhone and its innovative features and applications, for instance, has provoked an unprecedented competitive reaction. The marketplace is now awash with innovative devices that allow consumers to do things that no one even imagined just a year or two ago and that cost consumers less than previous, less capable devices. In the absence of the exclusive distribution arrangement between AT&T and Apple, though, this competitive frenzy would not have occurred, as competitors would have seen no need to develop a differentiating response in the marketplace. Indeed, it is now so clear that the success of the iPhone has energized competition, giving all consumers more and better choices, that even the opponents of exclusivity no longer seriously dispute it. Rather, they unabashedly plea for special protection *from* competition, arguing that, unless they are permitted to free-ride on the benefits of others' handset gambles (only the successful ones, of course), they simply cannot win and retain customers. Even if that were true, of course, it would in no way justify sacrificing consumers' interests, but, in all events, the facts tell a different story. The facts show that even the smallest wireless carriers offer a broad array of cutting-edge phones with all of the latest features and capabilities. And more than two years into the iPhone era which they claimed would put them under, rural and regional carriers are, as detailed below, actually reporting higher subscriber growth rates and margins than their larger competitors, aggressive expansion and 3G upgrades, and even their own exclusive offerings.

Second, there is no possible justification for the Commission to amend its roaming rules to provide automatic roaming rights to carriers that *already hold spectrum licenses* in the same service area. It would be hard to think of a more anti-investment policy. Requiring “in-market” roaming would relieve carriers of the need to build out their own networks and use their own spectrum. Meanwhile, carriers that do build out would be forced to facilitate what would amount to resale competition, which would burden their networks and create yet a further disincentive for a carrier to be the first to build. A new automatic data roaming requirement is equally unwarranted. Even if (contrary to fact) the Commission had authority to order information service roaming, any such requirement would create disincentives for carriers to make much-needed broadband investments.

Third, spectrum caps are yet another solution looking for a problem. The Commission eliminated spectrum caps in 2003, and the result has been unambiguously pro-competitive, allowing carriers to expand their in-network coverage and improve the quantity and quality of their services. No proponent of renewed spectrum caps has ever provided any evidence that the elimination of spectrum caps has harmed competition. Rather, those that support spectrum caps transparently seek a reduction in the competition for (and hence a lowering of the value of) spectrum.

Finally, Sprint tries to make this proceeding about *wireline* competition by repeating its baseless claims that the Commission should mandate wireline special access rate reductions. The record in the Commission’s special access docket overwhelmingly demonstrates that special access is robustly competitive, and that Sprint and other customers have lots of options (at falling prices) even for the lowest capacity circuits. It is for this reason that Sprint and its allies are fighting so hard in that proceeding to avoid having to submit data about their own networks and

special access options. Moreover, mandating massive rate reductions for special access would severely diminish the incentive of any carrier (incumbent or entrant) to build or upgrade the wireline broadband infrastructure that is so important to our nation's future, since huge rate reductions would eliminate any expected return from such investments. And Sprint's claims that special access rates are harming wireless competition are particularly disingenuous, given that Sprint concedes that the wireless marketplace is competitive, does not contend that AT&T or Verizon discriminate in favor of their wireless affiliates, and has hitched its broadband wagon to Clearwire, whose stated goal is to build and self-provide its own wireless backhaul.

I. THERE IS OVERWHELMING EVIDENCE THAT THE UNITED STATES WIRELESS MARKETPLACE IS ROBUSTLY COMPETITIVE.

The comments confirm that “the Commission should continue to consider a range of indicators” in determining whether there is effective wireless competition.¹⁵ Although the Commission sought comment on whether it should attempt to “define effective competition in a more specific manner,”¹⁶ no commenter, including those who question the competitiveness of the marketplace, has proposed any “more specific” definition of effective competition. Nor does any commenter seriously dispute the relevance of the established economic indicators that the Commission has always applied; to the contrary, the record establishes that the Commission's time-tested framework for consideration of those indicators is both rigorous and responsive to new data.¹⁷ The Commission should therefore “continue to use the same approach for its 2009

¹⁵ *Notice* at 3.

¹⁶ *Id.*

¹⁷ *See* AT&T Comments at 8-15; Verizon Comments at 11-13 (noting that “[t]he Commission has performed an increasingly more rigorous analysis of the structure and performance of the wireless market” and describing the increasing detail and depth of analysis in the successive annual reports); CTIA Comments at 8-9 (urging the Commission to adhere to the approach “of the last thirteen consecutive dockets” and referencing “sources of information that will help both the Commission and Congress” understand the industry). *See also* Katz Decl. ¶¶ 29-30, 52-59.

review.”¹⁸ The Commission’s four categories of established metrics – market structure, provider conduct, consumer behavior, and market performance – overwhelmingly demonstrate that the wireless industry “is robustly competitive in both rural and urban markets.”¹⁹ As detailed below, commenters’ contrary claims reflect bad facts, bad logic or both.

A. Market Structure Considerations Confirm That The Wireless Industry Is Highly Competitive.

The structure of the U.S. wireless marketplace effectively *guarantees* intense competition: (i) the Commission has set aside enough spectrum to support multiple carriers throughout the nation; (ii) numerous carriers have made enormous investments to build out wireless networks; and (iii) to recover those investments carriers have no choice but to compete fiercely for customers. Because of far-sighted Commission policies, U.S. wireless customers “can choose from among multiple carriers who vie head-to-head to win their business,” and no single carrier holds even a remotely dominant share of the market.²⁰ More than 95 percent of the U.S. population can choose among three or more competing wireless carriers and nearly two-thirds can choose among five or more competing carriers.²¹ No industrialized country can boast a wireless industry that is as well structured to promote competition.²²

¹⁸ Verizon Comments at 11; *see also id.* at 13 (“The Commission’s current approach fully discharges its obligation under Section 332(c)(1)(C) of the Act”); CTIA Comments at 8 (“CTIA urges the Commission to retain its results-tested method for determining CMRS competition”).

¹⁹ CTIA Comments at 8; Katz Decl. ¶¶ 52-59.

²⁰ CTIA Comments at 2, 5-6 (270 million U.S. wireless subscribers obtain service from more than 150 separate wireless licensees, and the largest market share of any carrier is 28.5%).

²¹ *See* AT&T Comments at 19.

²² CTIA Comments at 50 (citing Letter from Christopher Guttman-McCabe, Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, Federal Communications Commission, RM-11361, GN Docket No. 09-51, and WC Docket No. 07-52 (filed May 12, 2009)). There is also a “dynamic resale market” with over 43 MVNOs offering differentiated products and services to target specific market segments. *Id.* at 6-7.

The U.S. wireless marketplace also is open to new entry. The most dramatic example is Clearwire, a joint venture backed by Google, Intel, Sprint, and large cable companies that has acquired from scratch what it touts as “a nationwide spectrum portfolio” and is rapidly building a nationwide WiMAX network.²³ Even since the opening comments were filed, Comcast (following on the heels of other cable companies like Cablevision) has announced that it will begin offering wireless data services using Clearwire’s network.²⁴ As observers have noted, “through the Clearwire venture, cable companies like Comcast and Time Warner Cable Inc. . . . are trying to beat rivals [such as AT&T and Verizon] to market [with 4G services].”²⁵ Other cable giants, such as Cox Cable, are deploying their own 3G and LTE wireless networks to bring wireless broadband services to their customers.²⁶ And, as CTIA reiterates, many others are also either entering or positioned to enter, including EchoStar, Chevron, and Vulcan Ventures.²⁷

²³ See Verizon Comments at 8-10.

²⁴ *Comcast To Offer 4G Wireless Broadband Service*, CNET News (June 30, 2009) (“Comcast is getting into the wireless broadband business by bundling Clearwire’s 4G wireless service with its existing broadband products. [Comcast] will launch the new service in Portland, Ore. And it will expand the service to other Comcast cities later in the year, including Atlanta, Chicago, and Philadelphia. Clearwire’s plan has been to roll out its service nationwide.”); see also Vishesh Kumar, “Comcast to Offer Wireless Cards,” Wall St. J., p. B5 (June 30, 2009), available at <http://online.wsj.com/article/SB124630057671269255.html?ru=MKTW#mod=MKTW> (“Comcast Corp. said it will begin offering wireless-broadband cards for laptop users in Portland, Ore., in what the cable operator is billing as a prelude to a wider wireless rollout”).

²⁵ Vishesh Kumar, “Comcast to Offer Wireless Cards,” Wall St. J., p. B5 (June 30, 2009), available at <http://online.wsj.com/article/SB124630057671269255.html?ru=MKTW#mod=MKTW>.

²⁶ *Huawei Seals Deal With Cox*, CNET News (Mar. 30, 2009) (Cox Communications . . . is building its own 3g cell phone network,” “which the Company says will be upgradeable to the 4G wireless technology LTE”), available at http://news.cnet.com/8301-1035_3-10207290-94.html.

²⁷ CTIA Comments at 6; see also *id.* (describing recent significant spectrum acquisitions by T-Mobile, Leap Wireless, and Metro Communications).

Existing competitors are also expanding. AT&T and Verizon have documented their own aggressive efforts to increase coverage and bandwidth,²⁸ and expansion is by no means limited to larger carriers. Cricket just announced that its services are now available in the D.C. and Baltimore areas and that these launches “together with our other recent launches in Philadelphia and Chicago, are part of our overall plan to expand our coverage along the Eastern Seaboard and in other key markets across the U.S.”²⁹ MetroPCS has announced “major metropolitan area launches” “and continued growth of existing markets into adjacent communities,” and it has told investors it “is fully funded for this planned significant expansion with a substantial liquidity cushion.”³⁰ Cellular South’s web site contains press release after press release touting its expansion into new areas and its 3G upgrades, as part of its “more than \$350 million investment since 2006 in equipment, services and software to advance Cellular South’s wireless network.”³¹

Those who seek regulation of services for ideological or self-interested reasons search in vain for the dark cloud in the silver lining. For example, CFA and its allies argue that because the average CMRS HHI is above 1800, the wireless marketplace is, *ipso facto*, non-competitive. But this argument is based on a fundamental misunderstanding of the purpose of such market

²⁸ AT&T Comments at 4-5, 29-34; Verizon Comments at 10-11.

²⁹ Leap Wireless, Press Release, Leap Brings Cricket Unlimited Wireless Services to Washington, D.C. and Baltimore (June 23, 2009), available at <http://phx.corporate-ir.net/phoenix.zhtml?c=191722&p=irol-news>.

³⁰ MetroPCS, Raymond James Investor Conference, at 9 (March 9, 2009), available at <http://investor.metropcs.com/phoenix.zhtml?c=177745&p=irol-presentations>.

³¹ Press Release, Cellular South, Cellular South Expands 3G High-Speed Mobile Broadband Services to Meridian, Lauderdale County (May 28, 2009), available at https://www.cellularsouth.com/news/2009/20090528_Meridian.html. There are numerous other Cellular South press releases reporting numerous other expansions and upgrades to its network, available at <https://www.cellularsouth.com/news/index.html>.

concentration metrics.³² Concentration metrics like the HHI are merely a starting point for determining whether a market is competitive;³³ they are most useful where direct market-based evidence of competition is unavailable, such as in the context of horizontal mergers, where there typically is limited or no evidence as to how the marketplace will actually perform post-merger. But even in those circumstances, a relatively high concentration simply means that the regulator or court may decide to take a closer look at actual marketplace conditions, such as pricing, output, quality, investment, innovation, advertising, churn rates, and so on.³⁴

It has thus been “many years since anyone knowledgeable about” competitive analysis “thought that concentration by itself imported a diminution in competition.”³⁵ Indeed, the current FTC and DOJ economists have strongly criticized any attempt to “link[] increases in concentration to declines in market performance,” explaining that “[i]n recent decades . . . industrial organization scholars and the courts have been more apt to stress that high concentration can be compatible with vigorous competition and efficient market performance.”³⁶

³² See Katz Decl. ¶¶ 16, 23 (“measures of concentration suffer from several drawbacks that limit their usefulness or invalidate them as stand-alone indicators,” and “it would be a mistake to simply assume that the market in question is not effectively competitive” merely because HHIs exceed 1800).

³³ See *id.* ¶¶ 16-30.

³⁴ *Id.* For example, under the Horizontal Merger Guidelines, even where a merger is proposed in an industry with HHI measures above 1800, further examination of the marketplace is required, including entry, innovation, pricing, output, technology, potential for coordinated interaction, and other factors. Horizontal Merger Guidelines, U.S. Department of Justice and the Federal Trade Commission, §§ 1.151-1522 (1992). See also Katz Decl. ¶ 25 (“A study of mergers reviewed but not challenged by the FTC between 1996 and 2003 showed that the mean HHI was in excess of 3000.”).

³⁵ *Capital Cities/ABC, Inc. v. FCC*, 29 F.3d 309, 315 (7th Cir. 1994); *United States v. Syufy Enters.*, 903 F.2d 659, 665-66 (9th Cir. 1990) (“In evaluating monopoly power, it is not market share that counts, but the ability to *maintain* market share”) (emphasis in original).

³⁶ Joseph Farrell & Carl Shapiro, *Antitrust Evaluation of Horizontal Mergers: An Economic Alternative to Market Definition*, at 4 (Working Paper, Nov. 25, 2008).

Study after study shows that “a number of U.S. industries – including several that nearly all would regard as competitive – are relatively concentrated” as measured by HHIs.³⁷

High HHIs are particularly commonplace in markets that, like wireless, are characterized by high sunk costs and large economies of scale and scope.³⁸ “As consistently demonstrated by academic research, given the huge fixed and sunk costs inherent in the construction and commercial operation of communications networks, the equilibrium level of concentration of terrestrial firms in the local communications markets (voice, video, and data) will be relatively high.”³⁹ This is neither controversial nor novel. Indeed, every time the Commission has reported CMRS HHIs, it has cautioned that, where “the scale or output at which a firm can fully exploit scale economies (the minimum efficient scale) is large relative to potential demand, there will be room in the market for only a small number of firms operating at the lowest possible cost” and, as a result, “market concentration in such industries will tend to be high relative to industries characterized by greater potential demand or smaller efficient scale.”⁴⁰ And, when reviewing wireless mergers, the Commission employs a “screen” under which it has determined

³⁷ George Ford, Thomas M. Koutsky, Lawrence J. Spiwak, *Competition after unbundling: entry industry structure, and convergence*, Federal Communications Law Journal, at 4 (March 2007) (For example, the household refrigerator and freezer business has an HHI of over 2000, silverware manufacturing has an HHI of nearly 2800, and glass container manufacturing has an HHI of 3000).

³⁸ See Katz Decl. ¶¶ 21-23, 30.

³⁹ George Ford, Thomas M. Koutsky, Lawrence J. Spiwak, *Competition after unbundling: entry industry structure, and convergence*, Federal Communications Law Journal, at 4 (March 2007).

⁴⁰ *Ninth Report* ¶ 55; see also *Tenth Report* ¶ 47; *Eleventh Report* ¶ 46; *Twelfth Report* ¶ 53; *Thirteenth Report* ¶ 48.

that where the merger will result in an HHI below 2800 and will not increase the HHI by more than 250, “there is clearly no competitive harm in today’s generally competitive marketplace.”⁴¹

In short, it is well recognized that the wireless marketplace is *expected* to have higher HHIs, and that is fully consistent with the fact that wireless is intensely competitive.⁴² Ironically, it is clear that CFA does not believe its own rhetoric that market concentration is the be-all and end-all, for it touts European and Asian marketplaces, even though HHIs in those countries are far higher than those in the U.S.⁴³

Certain commenters hyperventilate about supposed “hyper-consolidation” from recent mergers.⁴⁴ This rhetoric lacks any factual support. Indeed, HHIs for the wireless marketplace in the Commission’s reports have barely changed since 2005.⁴⁵ Further, each of the transactions that has taken place in recent years has been subjected to careful review by the Commission and the Department of Justice, and divestiture commitments have been made when competitive concerns about the impact of consolidations have been pressed. For example, in the Verizon-Alltel merger, the DOJ and FCC required, as a condition of their approval, that Verizon and

⁴¹ Memorandum Opinion & Order, *Applications of Wireless Telecommunications, Inc., Debtor-In-Possession, Assignor and The Vermont Telephone Company, Inc., Assignee*, 24 FCC Rcd 3177, ¶¶ 15-16 (2009).

⁴² Katz Decl. ¶¶ 21-23, 30 (“although a wireless market with three or even five facilities-based providers may yield HHI concentration figures that reside in the ‘highly concentrated’ category of the *Merger Guidelines*, it would be a mistake to simply assume that the market in question is not effectively competitive. Rather sound economics mandates an analytical approach that is consistent with the Commission’s current methodology”).

⁴³ CTIA Comments at 53.

⁴⁴ RTG Comments at 12.

⁴⁵ *Thirteenth Report* ¶ 46, Table 3.

Alltel divest spectrum and other assets in every area where the merger would have reduced the number of wireless providers to three or fewer.⁴⁶

More fundamentally, the mergers that have occurred have manifestly benefited consumers and intensified competition. Much of the recent consolidation in the wireless industry has occurred when a national or large regional carrier purchased a smaller carrier serving a rural or underserved area, bringing customers in those areas access to the same wireless services and products that are available to customers in the most densely populated areas, including access to next-generation networks, innovative voice and data plans, and many other services and features.⁴⁷ While certain rural providers and Washington-based groups complain about the heightened competition they are experiencing as a result of these mergers, *consumers* in those areas are not complaining.⁴⁸

CFA argues (at 10) that, in competitive markets with economies of scale, one would expect concentration measures to be highest in the least densely populated EAs. It then claims, using raw population as a proxy for population *density*,⁴⁹ that the *Thirteenth Report* shows that both the highest and lowest concentration levels are in the least populated EAs “demonstrating

⁴⁶ *Applications of Cellco P’ship d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Commc’ns Act*, 23 FCC Rcd. 17444, ¶ 101 (2008) (“*Verizon-Alltel Order*”) (requiring divestiture in “in any market in which the transaction would reduce the number of genuine competitors to three or fewer”).

⁴⁷ AT&T Comments at 24; *see also Verizon-Alltel Order*, ¶¶ 119-156 (2008) (these transactions “result in expanded and improved services and features for wireless customers, especially in rural areas,” “increased broadband deployment and next generation services,” “higher quality service,” and “increase[d] efficiency and . . . economies of scale and scope.”).

⁴⁸ Katz Decl. ¶¶ 14-15.

⁴⁹ CFA Comments at 5, n.10.

distortions compared to what would be expected from a competitive environment.”⁵⁰ But the Commission has already rejected this approach. Rather than relying on population figures as a proxy for population density, the Commission directly examined the relationship between concentration and population density (as well as per capita income, urbanization, the age distribution of the population, and the size and composition of the business sector).⁵¹ The Commission found that relative concentration levels are consistent with economic theory.⁵²

In short, the wireless marketplace structure is conducive to intense competition, and arguments to the contrary are meritless. Moreover, as discussed more fully below, every other measure that the Commission and economists use to gauge competition confirms that competition in the wireless marketplace is intense.

Nonetheless, there are a few measures the FCC can and should take that would remove regulatory barriers to even more intense competition. One such measure would be to issue an order in the pending Section 332(c)(B)(A) proceeding to ensure that “local ordinances and state laws” do not effectively block competitive entry.⁵³ As the record makes clear, “all CMRS providers, not just those in rural markets, are beginning to have problems with tower sitings” and “[n]o amount of broadband stimulus funding or good intentions of mobile broadband service providers can overcome local and state zoning restrictions specifically promulgated to limit the

⁵⁰ *Id.* at 5.

⁵¹ *Thirteenth Report* ¶ 48.

⁵² *Id.* (“[a] regression analysis of data at the EA level indicates that, consistent with economic theory, concentration in the mobile telephone market (measured by HHI) declines with increases in market size, population density, per capita income and percentage of the population living in urban areas”); *see also* Katz Decl. ¶ 48. CFA also wrings its hands over individual EAs with HHIs in the 4000-6000 range. But these are some of the most rural EAs in the country, such as Scottsbluff, Wyoming, Minot, ND, and North Platt, Colorado, where one would expect much higher concentration due to scale economies. *See id.* ¶ 21.

⁵³ RTG Comments at 8; AT&T Comments at 28-29.

speedy deployment of cell towers.”⁵⁴ The Commission should promptly address this growing problem. The Commission should also ensure greater regulatory certainty for wireless auction bidders, in the form of clear and secure spectrum rights,⁵⁵ and commenters agree that the Commission will eventually have to make more spectrum available for CMRS carriers.⁵⁶

B. Provider Conduct Unambiguously Confirms That The Wireless Marketplace Is Effectively Competitive.

Pricing Rivalry. Those claiming ineffective competition have a difficult time with the pricing facts. As CTIA notes, “[p]rices continue to drop” and “the price per minute in the United States is the lowest of the 26 OECD countries measured.”⁵⁷ Competition has pushed carriers to offer innovative pricing plans for voice and data services “to satisfy all levels of subscriber usage, including friends and family plans, free long distance plans, national and local plans and unlimited calling and data services options.”⁵⁸ In addition, AT&T has introduced family plans, a plan tailored specifically for seniors, and other consumer-friendly features such as free roll-over minutes, free nights and weekends, and free intra-network calling. AT&T and other carriers also have introduced a variety of unlimited, flat-rated calling plans; indeed, “Cricket’s entire business model is based on flat-rate, unlimited calling within its coverage network.”⁵⁹ Carriers likewise have been introducing innovative rate plans for text messaging, including flat-rated plans, with

⁵⁴ RTG Comments at 8.

⁵⁵ AT&T Comments at 30.

⁵⁶ *Id.* at 29-30; CFA Comments at 26; Cricket Comments at 10; MetroPCS Comments at 20-21.

⁵⁷ CTIA Comments at 2.

⁵⁸ *Id.* at 24; *see also id.* (“The bottom line is that, through tiered pricing, the wireless industry accommodates consumers’ needs across all income and usage levels”).

⁵⁹ *Id.* at 25; *see also id.* at 24-29 (detailing numerous plan offerings, including “pay as you go” plans, “less expensive or targeted unlimited plan offerings,” and bundled services plans); Verizon Comments at 18 (detailing the emergence of non-contract broadband service alternatives).

the result that the amount consumers pay for text messaging has been plummeting, while usage increases dramatically. In just the last year, the number of text messages on AT&T's network has doubled.⁶⁰ Carriers are also increasingly offering prepaid or pay-as-you-go plans, which are placing even more competitive pressure on rates and provoking yet more competitive responses from all carriers.⁶¹ For example, Tracfone recently introduced a pre-paid plan offering 1000 voice minutes, 1000 text messages, and 30 Mbps of data for \$30 per month, and for an additional \$15 per month, Tracfone offers unlimited voice and text messaging with this plan.⁶²

Incredibly, amidst this diverse array of pricing plans, CFA purports to find not rivalry but “parallel pricing.” This claim is absurd. Not only do rates and terms vary widely from carrier to carrier, but those offers are constantly changing in response to competition. As shown in Attachment B, of dozens of plans offered by the four largest carriers, there are very few, if any, that provide the same service offering for the same price.⁶³ This should come as no surprise. As AT&T explained in its opening comments, coordinated “parallel” pricing is simply implausible in dynamic industries like wireless, in which providers offer a large range of products and bundles (*e.g.*, voice, texting, Internet, email, music, video, GPS) with multiple pricing variables (*e.g.*, rollover minutes, free night and weekend calling, free in-network calling, and handset subsidies).⁶⁴

⁶⁰ See CTIA Comments at 24-29; AT&T at 31-32 & n.58.

⁶¹ CTIA Comments at 28-29; Verizon Comments at 18.

⁶² Ken German, *TracFone Offers \$45 Unlimited Plan*, CNET News (July 2, 2009), available at http://news.cnet.com/8301-17938_105-10276677-1.html.

⁶³ As CFA itself concedes, the national carriers' minute plans bottom out at minutes ranging from 200 to 450, depending on the carrier, and the prices for those plans range from about \$30 to \$40. CFA Comments at 8. See also Katz Decl. ¶ 47.

⁶⁴ See AT&T Comments at 20-21 & nn.35-36; see also Katz Decl. ¶ 47.

CFA claims that national wireless providers in the U.S. “offer little flexibility and consumer choice” because their “monthly plans offer a minimum of 200-450 minutes for \$29.99 to \$39.99” which, according to CFA, forces customers to purchase more services than they want. But, amidst exploding demand for wireless services, CFA’s claim that customers want monthly plans with fewer minutes is a makeweight. The average wireless customer in the U.S. uses more than 800 minutes per month. Equally important, CFA ignores that the national carriers not only offer dozens of prepaid and postpaid plans with varying minutes, but various “pay-as-you-go” plans. Indeed, any review of the carriers’ websites vividly illustrates that the national carriers offer much more choice and flexibility in rate plans than the smaller carriers, which typically offer only a handful of options.

CFA is also incorrect when it claims (at 9) that U.S. prices do not reflect the economies of scale associated with the growth in wireless customers since 2000. Between 2000 and 2007 (the most recent data year), the number of voice minutes increased by 3.01 times and the number of voice subscribers increased by 2.4 times⁶⁵ – but prices for voice services were 3.6 times lower in 2007 than they were in 2000.⁶⁶ Thus, contrary to CFA’s assertion, prices actually fell by more than call volumes or subscribership increased.

CFA’s claims of data service “parallel pricing” are equally specious. First, it claims that the mere fact that carriers have “overage” charges for heavy data use in flat-rate data plans proves a lack of competition. As with voice plans, however, the actual facts reflect intense rivalry; carriers offer many different types of data plans with different usage thresholds, flat rates, and overage charges. Moreover, there can be no serious argument that the mere existence

⁶⁵ *Thirteenth Report*, Table 12 (showing minutes of use for 2000 and 2007); *compare Seventh Report*, at 21 with *Thirteenth Report* ¶ 197 (showing increase in subscribers).

⁶⁶ *Thirteenth Report*, Table 12.

of caps on usage in data plans somehow reflects a lack of competition. Network management is a central issue in wireless networks. All portions of the wireless network are shared among users, and as a result, any user's individual actions can affect the quality of service for all other users of the bandwidth (and can even result in blocked calls). This creates a heightened need for active network management on wireless networks, and wireless providers must take far greater care than wired broadband providers to limit use of bandwidth-intensive applications or devices that occupy channels even when they are not actively in use. Accordingly, the fact that AT&T and other carriers price their data services in ways that encourage users to internalize the cost of their usage is unremarkable.⁶⁷

CFA's claim that, "at 20 cents per message," "[p]rices for text messages services reflect a failure of competition,"⁶⁸ is even more disingenuous. Here too variations in rate plan offerings refute any suggestion that carriers coordinate prices.⁶⁹ More fundamentally, the vast majority of text messages transmitted by large carriers are sent under one of their plans offering a fixed number of (or unlimited) messages. Indeed, more than 99% of the messages that AT&T customers send and receive are under fixed-rate pricing plans. The price per message in these pricing plans is just over a penny, not 20 cents. And those per-message prices have been plummeting: AT&T's prices were about three times higher in 2007 (about 4.3 cents per

⁶⁷ CFA's specific attack on AT&T's "overage charges" for certain data services is also meritless. CFA focuses on AT&T's \$60 Data Connect plan that allows customers to use their laptop computers to access the Internet over AT&T's wireless broadband network. This plan allows customers to download 5 Gigabytes of data each month, a level that very few AT&T customers even come close to reaching.

⁶⁸ CFA Comments at 11.

⁶⁹ See, e.g., Testimony of Randall S. Milch, Executive Vice President and General Counsel of Verizon Communications Inc., before the Senate Judiciary Committee, Subcommittee of Antitrust, Competition Policy, and Consumer Rights, June 16, 2009, Appendix at 5-7, *available at* <http://judiciary.senate.gov/hearings/hearing.cfm?id=3917>.

message) than they are today (1.4 cents per message).⁷⁰ That is a triumph of competition, not a failure.⁷¹

Non-Pricing Rivalry. The comments also document unprecedented non-price rivalry.⁷² Carriers across the industry are working harder than ever to improve service quality, and customer satisfaction is at an “all-time high.”⁷³ Carriers also advertise heavily in all types of media outlets.⁷⁴ In addition, they continue to make substantial investments in existing and next-generation networks “[a]t a time when the U.S. economy is struggling through a recession;” as CTIA notes, in 2008, U.S. carriers reported incremental capital expenditures in their operational systems of \$20.17 billion.⁷⁵ Much of this investment has been targeted at developing the infrastructure for wireless broadband services, which are experiencing explosive growth.⁷⁶ Here, again, the U.S. leads the world. U.S. LTE deployment is scheduled to begin next year,⁷⁷ while large European carriers do not expect to begin rolling out LTE before 2012.⁷⁸

⁷⁰ See *id.*; see also Written Statement Of Wayne Watts (AT&T), before the Senate Judiciary Committee, Subcommittee of Antitrust, Competition Policy, and Consumer Rights, June 16, 2009, Appendix at 5-7, available at <http://judiciary.senate.gov/hearings/hearing.cfm?id=3917>.

⁷¹ See Katz Declaration ¶ 49.

⁷² CTIA Comments at 29 (“[c]ompetitive forces continue to drive carriers to modify other features and policies”).

⁷³ Verizon Comments at 3 (citing Press Release, *ACSI: Customer Satisfaction Rises Again, Now Joined by Other Economic Indicators* (May 19, 2009), available at http://www.theacsi.org/images/stories/images/news/0901q_Press_Release.pdf).

⁷⁴ CTIA Comments at 7-8.

⁷⁵ *Id.* at 12.

⁷⁶ See *id.* at 17-23 (detailing current high-speed offerings of various carriers and planned, next-generation upgrades); Verizon Comments at 8-10 (describing plans of Clearwire and other providers). CTIA also documents the extraordinary growth in the number of cell sites in the United States (reaching 242,000 at the end of 2008, one for every 1,116 estimated wireless subscribers). CTIA Comments at 21-22.

⁷⁷ See, e.g., Christine Gallen, *A Dozen Operators Launching LTE Services in 2010*, ABI Research (June 16, 2009), available at [“http://www.abiresearch.com/press/1442-](http://www.abiresearch.com/press/1442-)

But reciting these facts only scratches the surface, because non-price rivalry among carriers today is driving innovation and choice at rates never before seen in the wireless industry. Carriers, device manufacturers, and applications developers are scrambling to offer new features and capabilities on an almost daily basis. AT&T is a perfect example. AT&T's customers have an incredible range of choice for devices; they can either bring their own phone or choose one of the scores of handsets AT&T offers, which provide an enormous variety of cutting-edge features, functions, and operating systems (Blackberry, Mac OS X Leopard, Microsoft Windows Mobile, Palm OS, and Symbian). Over the past year, competition for applications has also intensified greatly (driven prominently by Apple's iTunes Store), and developers are making thousands of applications available for all platforms.⁷⁹ There are now more than 50,000 applications available at the iTunes Store alone, and there were over one billion downloads in its first nine months of operation.⁸⁰ AT&T and other carriers are further feeding this innovation and competition by providing software development kits to help independent programmers develop third-party applications.⁸¹

A+Dozen+Operators+Launching+LTE+Services+in+2010; Verizon Press Release, Verizon Wireless Fosters Global LTE Ecosystem as Verizon CTO Dick Lynch Announces Deployment Plans (Feb. 18, 2009), *available at* <http://news.vzw.com/news/2009/02/pr2009-02-18.html>; AT&T Press Release, AT&T to Deliver 3G Mobile Broadband Speed Boost (May 28, 2009), *available at* <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=26835>.

⁷⁸ Lynnette Luna, *Vodafone: No LTE in Europe before 2012*, Fierce Wireless (July 9, 2009), *available at* <http://www.fiercebroadbandwireless.com/story/vodafone-no-lte-europe-2010/2009-07-09>.

⁷⁹ AT&T Comments at 36-37; *see* CTIA Comments at 38-40 (listing and describing existing and planned applications stores).

⁸⁰ Press Release, *Apple, Apple Sells Over One Million iPhone 3GS Models* (June 22, 2009), *available at* <http://www.apple.com/pr/library/2009/06/22iphone.html> (there are “over 50,000 applications available from Apple’s revolutionary App Store”).

⁸¹ AT&T Comments at 38-40.

No commenter can dispute these facts; indeed, this extraordinary degree of non-price rivalry is readily apparent to any American. Undeterred, CFA complains that “the popular Skype VoIP program is not permitted to operate over AT&T’s 3G network.”⁸² That is false. AT&T wireless customers are free to choose any of a wide array of handsets with various operating systems, features, functionalities and prices that support VoIP over AT&T’s 3G network.⁸³ The same is true of other carriers. Indeed, Skype’s own website lists nearly a hundred different wireless handsets that are compatible with its services, including devices that work with all of the major wireless carriers’ networks.⁸⁴ Consumers do not lack options to run Skype over 3G wireless networks, including AT&T’s network.⁸⁵

CFA’s assertion that AT&T has chosen not to support “several” of the features of the new iPhone is also just plain wrong. There are only two features of the brand new iPhone that AT&T’s network does not *yet* support, MMS (text messaging with pictures, videos or other

⁸² CFA Comments at 12.

⁸³ For example, AT&T supports and markets numerous Windows Mobile handsets produced by Samsung, LG, HTC, Pantech, and Motorola, and any consumer who chooses one of these handsets can download Skype’s software to the handset and use it to make Skype calls over AT&T’s 3G network, which treats the Skype packets like other data packets, neither restricting nor prioritizing their delivery. See <http://www.wireless.att.com/cell-phone-service/cell-phones/index.jsp>; <http://www.skype.com/download/skype/windowsmobile>. See also Katz Decl. ¶ 45.

⁸⁴ See <http://www.skype.com/download/skype/mobile>; Katz Decl. ¶ 45. In addition to offering handsets that allow customers to run Skype on AT&T’s 3G network, AT&T offers, and many AT&T customers have chosen, handsets that include Wi-Fi compatibility. Customers with Wi-Fi access (including iPhone customers) can use VoIP on their handsets at locations with a Wi-Fi signal, including any one of AT&T’s more than 20,000 Wi-Fi hot spots.

⁸⁵ CFA focuses solely on the iPhone, which supports Skype calls using Wi-Fi connections, but not using AT&T’s 3G network. In so doing, CFA ignores that, for some handsets, especially iconic handsets like the iPhone, it is critical to ensure a uniform high level of performance and call quality. But call quality using Skype can vary greatly when using a 3G network, as Skype’s own website makes clear. <https://support.skype.com/faq/FA1011/Can-I-use-Skype-over-3G?frompage=search&q=3g> (although “[m]ost 3G networks . . . support Skype . . . call quality will vary depending on your network bandwidth and 3G usage by other users in your area.”).

media) and tethering (which allows customers to use the iPhone to connect laptop computers to the Internet over AT&T's 3G network). AT&T has announced that it will support both features in the near future, and that the MMS service will be provided at no additional cost.⁸⁶ But the fact that the best CFA can do is offer a couple of complaints about a couple of features on one of the more than 600 wireless devices available today – indeed, it often seems as if commenters equate the iPhone with the entire wireless marketplace – is powerful confirmation of an intensely competitive U.S. wireless marketplace.⁸⁷

C. Customer Behavior Also Unambiguously Shows That The Wireless Marketplace Is Effectively Competitive.

Customer conduct provides additional real world evidence that wireless markets are highly competitive. The record demonstrates that consumers have access to a wealth of information that enables them to make informed choices among the many service providers and service plans available to them, and that consumers are ready, willing, and able to change providers in order to obtain the best possible value proposition.⁸⁸ Not only are the rates, terms and conditions of the various service plans readily accessible on carriers' web sites, but, so too, are resources, such as on-line coverage mapping programs which can be used to determine the

⁸⁶ AT&T, *iPhone 3GS Frequently Asked Questions*, available at <http://www.wireless.att.com/learn/internet/iphone-faq.jsp> ("Later this summer, as part of the 3.0 software, AT&T will make multimedia messaging (MMS) available at no extra cost to customers with a text messaging bundle. And, in the future, AT&T will offer tethering capability for iPhone 3G S and iPhone 3G.").

⁸⁷ CFA's assertion that AT&T's policy of not permitting customers to stream television stations over its 3G network reflects a lack of competition in the industry is likewise baseless. This is simply a bandwidth issue; it says nothing about the level of competition. Streaming television is a much more bandwidth-intensive activity than simply purchasing and downloading a television program or movie or watching Internet video clips. And it is entirely appropriate to impose limits in the terms of service to protect the quality of service for all customers.

⁸⁸ CTIA Comments at 35 ("[a] multitude of resources are available to help consumers measure their wireless options and determine which may best meet their needs including a wealth of publicly available information on carrier operations from the providers themselves").

level of service coverage in specific areas, some of which even “includ[e] ‘drill-down’ capabilities to the neighborhood and street level.”⁸⁹ Consumer resources also include third-party sources that “offer reviews and provide guidance on how to shop for a service provider and choose a mobile phone.”⁹⁰

That consumers avail themselves of this information and are willing and able to change providers to get a better deal is evidenced by the significant customer churn rates in the wireless industry.⁹¹ Recent developments, such as pro-rated early termination fees and “money back guarantee” policies will undoubtedly make it even easier for consumers to switch carriers.⁹² The actions of wireless consumers speak for themselves and demonstrate that carriers must compete hard to win and keep customers.

CFA tries to turn these facts upside down as well, arguing that there are “practical impediments to consumer[s] switching” wireless carriers, including early termination fees (“ETFs”) and contract extension requirements. To begin with, the notion that such measures permit carriers “to divide customers among themselves without the threat of suddenly losing them to a competing CMRS provider” does not pass the most basic reality check, in light of the significant churn rates that prevail in the industry. But even beyond that obvious flaw, CFA’s arguments fail.

For example, CFA claims that ETFs “lock in” customers by “penaliz[ing]” them for switching carriers. But ETFs are triggered only when a customer obtains a subsidized handset

⁸⁹ *Id.* at 35-36.

⁹⁰ *Id.* at 36 (citing www.myrateplan.com, [Phonescoop](http://Phonescoop.com), MountainWireless.com, J.D. Power and Associates, and *Consumer Reports*).

⁹¹ *See* AT&T Comments at 48.

⁹² CTIA at 30-31 (detailing carriers that offer 30-day cancellation periods and refunds of activation fees for customers who are not satisfied).

(sometimes for free) and/or subscribes to a subsidized or promotional service offering.⁹³ In such circumstances, the provider effectively gives the customer a substantial up-front discount, and, in return, the customer agrees to stay with the service for a fixed period so that the carrier can recover that up-front cost through the monthly subscription. The customer also agrees that if the customer cancels service early, the customer will pay an ETF to offset a portion of the up-front subsidy not yet recovered by the provider. Thus, the ETF is not a “penalty” designed to “lock in” a customer – it *expands* consumers’ options by making high-end expensive handsets or other services available with less money down.⁹⁴ In that respect, handset subsidies and the ETFs that facilitate them have played an important role in making wireless services accessible to all Americans. It is hard to understand why giving customers the *option* of obtaining a subsidized handset in return for a service commitment and ETF is in any way contrary to the public interest. In all events, contrary to the rhetoric of some comments, ETFs are set at eminently reasonable levels, and AT&T and other carriers pro-rate ETFs. For example, AT&T’s maximum ETF is \$175, which is less than the subsidy AT&T provides for some devices, and AT&T reduces the ETF by \$5 for each month that the customer continues to subscribe to AT&T’s service.

CFA’s allegation that providers secretly extend customer contracts or force customers to extend contracts when they change plans or upgrade phones is also false. First, AT&T never extends a contract without permission from the customer. Second, as explained on AT&T’s web

⁹³ Many customers are not even subject to ETFs, including customers with pay-as-you-go plans, customers who bring their own phone to the network, customers who pay full price (rather than a subsidized price) for a phone and service, and customers whose existing contracts have expired. In addition, for AT&T, ETFs are inapplicable for the first 30 days of most service, under AT&T’s 30-day worry-free return policy.

⁹⁴ See Katz Decl. ¶ 51.

site, customers may change their plans (up or down) without extending their contracts.⁹⁵ Third, consumers do not have to extend their contracts when they switch phones, unless the customer receives an up-front subsidy on the new phone, in which case, to receive that subsidy, the customer will be subject to a new term contract.

D. Market Performance Measures Show That The Wireless Marketplace Is Effectively Competitive.

Finally, marketplace outcomes, “the ultimate test of effective competition,”⁹⁶ overwhelmingly point to effective wireless competition. As the comments make clear, all of the market performance metrics the Commission has previously examined – “pricing levels and trends, subscriber growth and penetration, MOUs, innovation and diffusion of services, and quality of service”⁹⁷ – show effective and ever-increasing competition.

U.S. wireless prices continue to fall and are among the lowest in the world.⁹⁸ Indeed, in the days since comments were initially filed in this proceeding, the Wall Street Journal reported on yet another new low price offering that has investors “concern[ed] over a stepped-up price war” among wireless carriers.⁹⁹ At the same time, output continues to soar. The 270 million

⁹⁵ See <http://www.wireless.att.com/answer-center/main.jsp?t=solutionTab&solutionId=KB61945> (“Customers who change rate plans to any one of the company's standard wireless plans, during the course of their contract, will not be asked to extend their existing contract or enter into a new one.”).

⁹⁶ *Thirteenth Report* ¶ 187.

⁹⁷ *Id.*

⁹⁸ See CTIA Comments at 2.

⁹⁹ Roger Cheng, *New Low Wireless Rate Reignites Fear Over Price War*, Wall street Journal (July 2, 2009), available at http://online.wsj.com/article/BT-CO-20090702-714020.html?mod=dist_smartbrief; see also R.W. Baird, *Wireless Carriers Circling the Ring*, Barrons (July 2, 2009), available at http://online.barrons.com/article/SB124648889886482875.html?mod=googlenews_barrons.

wireless subscribers at the end of 2008 is a 15 million increase from just one year earlier.¹⁰⁰ The wireless penetration rate has rocketed upwards since 1985, and has now reached 87.8 percent.¹⁰¹ U.S. wireless consumers generated 2.2 trillion minutes of use, 1.005 trillion text messages, and 14.9 billion MMS messages in 2008 – all significantly up from the year before.¹⁰² Nearly 20 percent of U.S. consumers now live in households with only wireless service, as compared to less than 6 percent of U.S. households in 2005.¹⁰³ Customer satisfaction in the quality of wireless service is at all-time highs.¹⁰⁴

Wireless broadband growth is particularly striking, and is a direct result of the significant investments by carriers in their existing and next-generation broadband infrastructure. Notably, “mobile wireless broadband Internet access is the fastest growing segment of the U.S. broadband market.”¹⁰⁵ Indeed, from December 2006 to December 2007, wireless broadband additions far exceeded the additions from other modes of broadband (ADSL, cable, and other) combined.¹⁰⁶ Wireless consumers “have a number of options for mobile Internet access,” including metered services and all-you-can-eat plans (either on a month-to-month basis or longer terms contracts), which enable them “to tailor their wireless service plans to their broadband needs.”¹⁰⁷ The

¹⁰⁰ CTIA Comments at 42.

¹⁰¹ *Id.*

¹⁰² *Id.* at 43.

¹⁰³ *See* AT&T Comments at 2.

¹⁰⁴ Verizon Comments at 3

¹⁰⁵ CTIA Comments at 46.

¹⁰⁶ *Id.* at 47 (Citing FCC Report, *High-Speed Services for Internet Access: Status as of Dec. 31, 2007*, January 2009).

¹⁰⁷ *Id.* at 48.

proliferation of wireless broadband is of particular benefit to consumers in rural and high-cost areas that may have limited access to wireline broadband services.¹⁰⁸

CFA recognizes that the prices American consumers actually pay for wireless services have been going down, but contends that U.S. prices must be too high because U.S. consumers pay more than in “most other developed nations” – a claim that is based on an assertion that in 2005, U.S. customers paid fifteen percent more per year than the average paid by customers in OECD countries (\$506 in the U.S. compared to \$439 in other countries).¹⁰⁹ This argument is absurd. According to the Commission’s *Eleventh Report*, the average number of minutes of calls in the U.S. was *four times higher* than the average in OECD countries in 2005.¹¹⁰ If U.S. customers (in 2005) spent about 15 percent more per year to obtain at least four times more service, that’s a *good* thing.

CFA also was the only commenter to support using “profits” as a measure of marketplace performance. CFA’s entire argument is that, although prices admittedly are declining and usage is increasing, the market could still be noncompetitive if costs are declining more quickly than prices (and if carriers are earning persistent “supracompetitive profits”). CFA cites no evidence

¹⁰⁸ *Id.* at 49.

¹⁰⁹ CFA Comments at 8.

¹¹⁰ See *Eleventh Report* ¶ 192 & Table 12 (“The United States widened its lead in mobile voice usage in 2005, with average MOUs estimated to be approximately 798 per month in the fourth quarter of 2005. This compares with an average across Western Europe of 142.6 MOUs, and estimates in individual countries that range from a high of 279 in Finland to a low of 81 in Germany. MOUs in comparable Asian-Pacific countries were generally higher than the Western European average, but still well below the U.S. figure, including Japan (147), Australia (178), South Korea (321.6), Hong Kong (395), and Singapore (313).”). The Commission’s *Eleventh Report* contains the number of minutes for only a subset of the OECD countries on which CFA’s comparison of annual spending is based. According to the 2005 OECD report relied on by CFA, the number of minutes in the U.S. was closer to *thirty* times higher than the average of the other OECD countries. See Organization for Economic Co-Operation and Development, *OECD Communications Outlook 2006*, Table 4.10 (2007).

to suggest that this is the case, and as Dr. Michael Katz explains in his accompanying declaration, there are several fatal deficiencies in CFA's quest to rely upon carriers' "profits."¹¹¹ As Dr. Katz notes, "the economic literature has long recognized" that there are insoluble problems "inherent in trying to infer economic profits from accounting measures of profits."¹¹² Moreover, even if profits are high, "persistently high economic profits can be consistent with competitive markets" – especially if companies are achieving those profits through "innovation and other forms of successful, but risky investments." As Dr. Katz notes, "for these reasons," regulators and competition authorities "generally do not focus on accounting measures of profitability."¹¹³ And the Lerner Index measure of marginal cost margins is particularly poorly suited to capital intensive industries like wireless.¹¹⁴

¹¹¹ See Katz Decl. ¶¶ 31-39.

¹¹² *Id.* ¶ 32. For example, "asset valuation from an accounting perspective does not necessarily correspond to the true economic valuation of assets and investments," and thus "accounting treatment of capital investment often yields results that have little economic meaning" – a particular problem in a capital-intensive industry like wireless. *Id.* ¶ 33. Similarly, "it is essential to adjust the cost of capital to account for the degree of risk associated with the investment when calculating economic profits" but "proper adjustment for risk can be very difficult, and the failure to account properly for investment risk will yield inaccurate estimates of economic profits." *Id.* ¶ 34. In addition, "[e]conomies of scope make it socially efficient and commercially profitable for suppliers [such as CMRS carriers] to become multi-product firms," and "this fact raises complex issues about the sharing of common costs across different services, which makes the calculation of profits for an individual service particularly difficult." *Id.* ¶ 35.

¹¹³ Katz Decl. ¶ 36.

¹¹⁴ See *id.* ¶ 37 ("It is well-accepted among economists . . . that the Lerner Index can be subject to serious misinterpretation in a marketplace such as CMRS that is characterized by significant fixed costs and scale economies. In such a setting, market participants must set prices above marginal cost—perhaps substantially so—in order to cover fixed costs. Requiring firms to price at or near marginal cost in order to be considered competitive would set the wrong standard. In an industry with economies of scale, firms pricing at marginal cost would suffer economic losses and would not be commercially viable. Indeed, in the presence of economies of scale, a firm could have a Lerner Index of 70, 80 percent, or more and still be suffering economic losses. In addition, as discussed earlier in this section. . . . For these reasons, the Lerner Index can be a very poor indicator of economic profits.")

II. EXCLUSIVE HANDSETS, AUTOMATIC ROAMING, SPECTRUM CAPS AND SPECIAL ACCESS RATES RAISE NO ISSUES RELATING TO COMPETITION.

Some commenters view this proceeding as a proper forum to discuss anything *but* wireless competition. They have chosen to advocate their entire regulatory agendas – wireless and wireline – most of which constitute self-interested pleas for protection from competition. Thus, various commenters ask for restrictions on exclusive handsets, expanded automatic roaming, the reimposition of spectrum caps, and increased regulation of (wireline) special access services.

The Commission is already examining each of these issues in other pending proceedings. The commenters here repeat the same old arguments by rote, with no acknowledgement that those arguments have been repeatedly discredited and, in many cases, specifically rejected by the Commission. AT&T will not repeat the extensive showings it has made in the other proceedings, but instead will briefly address each of these claims.

A. Exclusive Handset Offers Are Pro-Competitive.

A number of commenters – led by Cellular South and MetroPCS – argue that exclusive handset arrangements are hindering wireless competition.¹¹⁵ They claim that, because of exclusive offers, rural consumers have no access to cutting edge phones and small and rural carriers are deprived of the ability to upgrade their networks.¹¹⁶ These claims are both factually false and theoretically incoherent. Where there is no single dominant provider – and no wireless

¹¹⁵ See Cellular South Comments at 8-16; MetroPCS Comments at 10-11; CFA Comments at 15-18; RTG Comments at 9-10.

¹¹⁶ Cellular South Comments at ii, 16-17.

carrier or device manufacturer is even remotely dominant – exclusive offers are commonplace and only *pro-competitive*.¹¹⁷

Exclusive handset offers are *pro-competitive* for a simple reason: they promote innovation, investment, and competition.¹¹⁸ In competitive markets, firms seek to differentiate and improve their products to attract new customers and to retain existing ones. One common form of differentiation is an exclusive offer. Exclusive handsets merely enhance one competing carrier’s offer, much like better service, better call quality, fewer dropped calls, or a lower price. As economists and regulators have long recognized, such exclusive offers have several strongly *pro-competitive* benefits. When an exclusive offer is successful, it raises the competitive bar for everyone else, igniting the virtuous cycle of innovation and response and resulting in better prices, better features, and/or better service.¹¹⁹ Exclusivity agreements also align incentives in ways that lead to more innovation more quickly: they permit the manufacturer to focus its resources on working with only one carrier to optimize, introduce and promote a new handset, while increasing the carrier’s incentives to make supporting network investments and to promote the handset (because no carrier wants to invest in and heavily advertise a handset only to have consumers buy the phone from a competitor).¹²⁰

¹¹⁷ See Katz Decl. ¶¶ 41-44; *see also* AT&T Comments, RM 11497, Declaration of Michael Katz ¶ 3 (“Katz Handset Decl.”) (exclusive contracts promote consumer welfare, and are problematic only where “a dominant distributor locks up such a substantial portion of the suppliers that rival distributors are left without competitively viable supply options” – circumstances that do not remotely exist here).

¹¹⁸ See Katz Decl. ¶¶ 41-44; *see also* Katz Handset Decl. ¶ 3.

¹¹⁹ See Katz Decl. ¶¶ 41-44; Katz Handset Decl. ¶ 9.

¹²⁰ See Katz Decl. ¶¶ 41-44; Katz Handset Decl. ¶¶ 12-27.

The record in the pending proceeding on exclusive handset arrangements overwhelmingly establishes these benefits.¹²¹ Indeed, the stimulative effects on innovation and competition from exclusive handset arrangements should be obvious to anyone that has followed the wireless industry since the introduction of the iPhone. The popularity of the iPhone and its innovative features and applications, has provoked an unprecedented competitive reaction. The result has been dramatically increased choice and value for all consumers, as carriers have raced to develop an “iPhone killer.” The marketplace is literally awash with innovative devices that allow consumers to do things that no one even imagined just a year or two ago, and that cost consumers less than previous, less capable devices. In the absence of the exclusive distribution arrangement between AT&T and Apple, this competitive frenzy would not have occurred, as competitors would have seen no need to develop a differentiating response in the marketplace. And with the exploding market for device applications, wireless handsets provide more direct benefits to consumers than ever before.¹²²

None of the proponents of restrictions on exclusive handset arrangements can explain away these facts, nor do they offer a credible showing that exclusive arrangements have diminished competition. Instead, they argue, in effect, that such arrangements make it more difficult for them to win and retain customers. That is an argument that should be given no weight in this or any other proceeding. As the Commission has long recognized, and as the D.C.

¹²¹ Katz Handset Decl. ¶¶ 12-27; AT&T Handset Comments, RM-11497, at 17-22; Verizon Handset Comments, RM-11497, at 20-28; Sprint Handset Comments, RM-11497, at 11-13; T-Mobile Handset Comments, RM-11497, at 3-8.

¹²² *See, e.g.*, Statement of Barbara S. Esbin, Senate Commerce Committee, June 17, 2009 (“if every carrier had been able to sell the iPhone when it was initially released, it is unlikely that there would have been as much carrier support for developing competing products such as Google’s G1, Research in Motion’s touch screen Blackberry Storm, Samsung’s Instinct, or Palm’s Pre”).

Circuit has held: “[t]he Commission is not at liberty . . . to subordinate the public interest to the interest of equalizing competition among competitors.”¹²³

To be sure, Cellular South and its allies’ attempt to wrap their arguments in a public interest cloak, but their claims in that regard are demonstrably false. For example, they assert that customers in rural areas have no access to exclusive phones. But AT&T offers service to more rural customers than any of the commenters seeking to ban exclusive arrangements. Moreover, AT&T has spent billions in recent years to obtain spectrum rights that would permit it to fill in the remaining gaps even further. Of course, AT&T is not the only carrier with exclusive handset arrangements, and other larger carriers have been taking similar steps to increase their coverage in rural areas. More importantly, even where AT&T or another larger carrier does not offer service, the innovation propelled by exclusive phone offers has generated a plethora of non-exclusive handsets with attractive features and capabilities – which are available to and offered by rural carriers today. Thus even if a particular handset that is subject to an exclusive arrangement is not available to a small segment of the population, the virtuous cycle of innovation spawned by that exclusive will benefit all consumers.

Similarly, although the success of certain exclusive phones in recent years has garnered a lot of attention, opponents of exclusivity greatly overstate the actual prevalence of exclusive phones in today’s marketplace. As CTIA has documented, there are more than 600 wireless phones available today, and the vast majority are non-exclusive. The current top selling device in the wireless industry is the Blackberry Curve – which is nonexclusive. AT&T’s own top

¹²³ *SBC v. FCC*, 56 F.3d 1484, 1491 (D.C. Cir. 1995); *Hawaiian Tel. Co. v. FCC*, 498 F.2d 771, 776 (D.C. Cir. 1974); *Competition in the Interstate Interexchange Marketplace*, 6 FCC Rcd. 5880, ¶ 60 (1991) (“the issue is not whether AT&T has advantages, but, if so, why, and whether any such advantages are so great as to preclude the effective functioning of a competitive market”; “[i]ndeed, the competitive process itself is largely about trying to develop one’s own advantages, and all firms need not be equal in all respects for this process to work”).

selling wireless device is the GoPhone – which also is nonexclusive. The reality is that all carriers have access to a vast variety of phones,¹²⁴ and there is no single phone that has been chosen by more than a small percentage of wireless customers.¹²⁵ As a result, all carriers today – including smaller carriers and rural carriers – offer a full portfolio of cutting-edge phones that have all of the latest features.¹²⁶

Exclusivity opponents further peddle the myth that national carriers somehow use ostensible market power to demand and obtain exclusive arrangements that hapless manufacturers would otherwise not give them. Wholly apart from the fact that no carrier in the hotly competitive wireless marketplace has market power to exert, nothing could be further from the truth. In the real world, what typically happens is that a carrier will approach a manufacturer and say that it would like to be able to offer a phone that is *not* in the manufacturer's current portfolio – *i.e.*, that the carrier believes that its customers would be interested in a new device with a certain look and feel, with a particular combination of features, at a particular price. The manufacturer's response is invariably that developing such a device would entail substantial risks, and it will ask the carrier to share in that risk by agreeing to substantial volume and other

¹²⁴ Multiple handset makers have introduced 3G handsets with touch screen displays and myriad other new features, including RIM (Storm), Samsung (Behold, Instinct, Glyde, Eternity, Delve), LG (Incite, Rhythm, Spyder, Voyager, Dare, VX830, Vu, Glimmer, Venus), Palm (Pre) and HTC (Max 4g, Touch HD, Touch 3G, Touch Viva, Touch Diamond Touch Dual, Touch Cruise, Touch Fuze).

¹²⁵ According to NPD Group, the top five selling wireless handsets in the U.S. for the first quarter of 2009, in order of sales, are the BlackBerry Curve, Apple iPhone 3G, BlackBerry Storm, BlackBerry Pearl, and the T-Mobile G-1. *See* Press Release, NPD Group (May 4, 2009), *available at* http://www.npd.com/press/releases/press_090504.html.

¹²⁶ AT&T Handset Comments, RM-11497, at 24-27 (rural carriers offer many high-end smartphones and are succeeding in the marketplace); Sprint Handset Comments, RM-11497, at 10-11 (“Small operators may not have the buying power of Tier I carriers, but by working together and developing innovative purchasing strategies, they are getting access to state-of-the-art devices in the same timeframe as their Tier I counterparts.”).

upfront commitments. The freedom to enter into an exclusive arrangement is what allows a carrier to make such commitments. But without that freedom, the economic basis for bringing innovative devices to market quickly would be severely diminished, because a carrier often could not then justify the development costs, advertising costs, close collaborative efforts with a manufacturer, and volume commitments required to launch the new handset.

When such gambles are successful, they raise the competitive bar and thus benefit all consumers. An obvious example is the iPhone, but another is the Samsung Propel. AT&T concluded that a low-cost device focused on text messaging would appeal to consumers, at a time when only Blackberries really catered to such users and when other manufacturers did not offer such devices. Accordingly, AT&T worked with Samsung to develop a texting device to AT&T's specifications, and AT&T made substantial volume commitments and heavily promoted the device. The Propel was a success, and it led directly to a flurry of innovation and competition from other manufacturers and carriers to create new texting-oriented phones.¹²⁷

But make no mistake: developing innovative phones entails great risk for both the carrier and the manufacturer. For every successful exclusive offer, like the iPhone, there are other gambles that do not pay off. For example, very few people remember the Motorola ROKR E680. The ROKR was the product of an exclusive agreement between AT&T, Motorola, and Apple. The idea was to develop a robust wireless device that would have direct access to iTunes and could store music. AT&T made a substantial volume commitment, and the companies made

¹²⁷ In that regard, when this risk-taking is successful, such devices often end up on the list of top ten selling devices. Commenters like CFA fall prey to a common chicken-and-egg misconception that carriers seek exclusive deals *because* a certain phone is popular; in reality, the carrier has taken a great risk at the outset by making substantial volume commitments and investing in multi-million-dollar promotional campaigns, and when those gambles pay off, the *result* is a popular phone. But the important point is that exclusivity greatly increases the carriers' and device manufacturers' incentives to take those initial risks.

significant investments and heavily marketed the device. Although the companies were hoping that the device would be a “game-changer,” it never connected with consumers and failed in the marketplace – even driving customer defections from AT&T. But opponents of exclusivity never look at this half of the picture. Exclusivity arrangements involve risk *and* reward. Opponents want to free-ride on the rewards when a phone is successful, but they want no part of the risks and the costs that are part and parcel of such arrangements. Eliminating or restricting the freedom to enter into such arrangements, however, would eliminate the ability of carriers to take those risks – and the losers would be consumers.¹²⁸

Nor is it true that manufacturers are opposed to exclusive arrangements and would expect to sell more units if they had no exclusive deals.¹²⁹ Granting exclusive distribution rights, which eliminates the possibility that other carriers will free ride on the exclusive carrier’s investments, creates powerful incentives on the part of the carrier to make volume commitments, to subsidize the purchase price of the device, and to engage in heavy promotion of the device – all of which can contribute greatly to the success of the device. An exclusive arrangement also facilitates close collaboration between the manufacturer and the carrier to integrate the device with the network, thus increasing the value the manufacturer can offer (which, in turn, enhances the manufacturer’s brand). Research in Motion, the largest distributor of smartphones (Blackberry), made these same points itself, in support of maintaining the freedom to enter into exclusive deals.¹³⁰

¹²⁸ See Katz Decl. ¶ 42.

¹²⁹ Curiously, Cellular South claims (at 9) that exclusive deals are “the direct result of the market power of those carriers with manufacturers” – but the Commission has held consistently for years that no wireless carrier has market power.

¹³⁰ See Reply Comments of Research in Motion, RM-11497, at 5-9.

In short, it is only becoming more clear that restricting exclusive arrangements would be unlawful and would disserve the public interest, and that rural and smaller carriers can compete without access to every available phone. As AT&T and others have shown, these carriers' own public statements and actions demonstrate that they are not only surviving but prospering in the iPhone era.¹³¹ As Cellular South concedes, these carriers have access to a broad range of cutting-edge handsets, including smartphones with all of the latest features, capabilities, and device applications,¹³² and are constantly providing their customers with new options that have ever-

¹³¹ See, e.g., MetroPCS Press Release, *MetroPCS Reports First Quarter 2009 Results: Industry Leading High-Growth, Low Cost Structure, Results in Record First Quarter Adjusted EBITDA* (May 7, 2009), available at <http://investor.metropcs.com/phoenix.zhtml?c=177745&p=irol-newsArticle&ID=1285538&highlight=> (reporting quarterly consolidated total revenues of \$795 million, an increase of 20% over first quarter of 2008, quarterly consolidated adjusted EBITDA of approximately \$199 million, an increase of approximately 12% over first quarter of 2008, and quarterly consolidated income from operations of \$131 million, an increase of 17% from first quarter of 2008); Leap Wireless Press Release, *Leap Reports Record Net Customer Additions of Nearly 500,000 for First Quarter 2009* (May 7, 2009), available at http://phx.corporate-ir.net/phoenix.zhtml?c=191722&p=irol-newsArticle_Print&ID=1286095&highlight= (reporting service revenues of \$514 million for the first quarter of 2009, an increase of 29 percent over the prior year period, and adjusted operating income before depreciation and amortization for the company's existing business of \$164.4 million, an increase of 22 percent over the prior year period). Leap Wireless also touts its "strong balance sheet," noting that at year end 2008 it had \$596 million in unrestricted cash. Leap Wireless 2008 Annual Review: Strong Balance Sheet, available at <http://www.leapwireless.com/ar2008/financial3.php>. Notably, MetroPCS has recently been selected to be added to the Standard & Poor's 500 stock index. See Reuters, *S&P 500 to add MetroPCS, drop Tyco Electronics* (June 22, 2009), available at <http://www.reuters.com/article/rbssTechMediaTelecomNews/idUSWEN086620090622>.

¹³² Cellular South Comments at 14; see also AT&T Handset Comments, RM-11497, at 24-26 (detailing phones smaller and rural carriers offer); Leap Wireless 2008 Annual Review: Latest Devices, available at <http://www.leapwireless.com/ar2008/devices.php> (noting that Leap offers "a quality handset portfolio from the major handset suppliers in the industry, such as Samsung, Motorola and Nokia as well as Kyocera and PCD"); Leap Wireless Press Release, *Leap Brings Cricket Unlimited Wireless Services to Washington, D.C. and Baltimore* (June 23, 2009), available at http://phx.corporate-ir.net/phoenix.zhtml?c=191722&p=irol-newsArticle_Print&ID=1301347&highlight= ("Cricket has more than a dozen devices available ranging from higher-end handsets, such as the touch screen Motorola Evoke, to more affordable mobile phones"); MetroPCS Annual Report 2008, at 7 ("We sell a variety of handsets manufactured by nationally recognized handset manufacturers for use on our network, including

expanding capabilities.¹³³ Smaller carriers plainly can obtain exclusive deals if that is the way they want to differentiate their offers – indeed, Leap Wireless recently took its “first step into device development” by delivering the Cricket EZ, a device that is “[d]esigned and manufactured specifically for Cricket.”¹³⁴ And, although, Cellular South, in particular, claims that exclusive offers preclude it from upgrading its network, Cellular South recently announced “aggressive” upgrades to 3G throughout its Mississippi service area.¹³⁵ Notably, Cellular South also recently began offering a subsidized Dell netbook, although at a congressional hearing last month it maintained that the “the largest carriers are now demanding exclusivity agreements” and have effectively locked up the netbook market, thus “effectively denying Netbooks to any American who could meet an entry-level price point but who does not live in the proper service area, or

models that have cameras, can browse the Internet, play music and have other features facilitating digital data”).

¹³³ See, e.g., Leap Wireless Press Release, *Cricket Introduces Samsung MyShot II with Customized Cricket MyHome Screen* (June 16, 2009), available at http://phx.corporate-ir.net/phoenix.zhtml?c=191722&p=irol-newsArticle_Print&ID=1299415&highlight=; MetroPCS Press Release, *MetroPCS Reports First Quarter 2009 Results: Industry Leading High-Growth, Low Cost Structure, Results in Record First Quarter Adjusted EBITDA* (May 7, 2009), available at <http://investor.metropcs.com/phoenix.zhtml?c=177745&p=irol-newsArticle&ID=1285538&highlight=> (reporting MetroPCS’ introduction of additional new smart phones); U.S. Cellular Press Release, *Samsung and U.S. Cellular Introduce Samsung Gloss* (May 26, 2009), available at http://www.uscc.com/uscellular/SilverStream/Pages/x_page.html?p=a_press090526; BusinessWeek, *Key Developments for Cellular South, Inc.*, available at <http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=4657234> (reporting Cellular South’s recent announcements of the availability of the Samsung Finesse touch screen phone and the Motorola Hint QA30 Slider Phone).

¹³⁴ Leap Wireless 2008 Annual Review: Latest Devices, available at <http://www.leapwireless.com/ar2008/devices.php>.

¹³⁵ See Cellular South Press Release, *Cellular South to Expand Availability of Advanced 3G Mobile Broadband Services Throughout Much of Mississippi* (March 10, 2009) (“Cellular South unveiled an ambitious plan today to dramatically expand availability of its third-generation (3G) high-speed wireless mobile broadband services to consumer and business customers in 28 counties and 78 cities in Mississippi this year”; “The company intends to aggressively invest in its wireless network across the footprint to increase coverage and capacity”).

who wishes to connect the device to their carrier of choice.”¹³⁶ Regional and smaller wireless providers tout the growth of their networks in both urban and rural areas,¹³⁷ expanded service offerings,¹³⁸ accelerating subscriber additions,¹³⁹ and high service quality and customer

¹³⁶ Written Statement Of Mr. Victor H. “Hu” Meena, President And CEO, Cellular South, Inc. On “The Consumer Wireless Experience,” Before The Committee On Commerce, Science And Transportation United States Senate, at 8-9 (June 17, 2009), *available at* http://www.commerce.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing_ID=03b81ffd-ba9f-42e6-8331-7c28f6d112b0&Witness_ID=a33a883f-d173-47ec-a9e6-1c2643e97bfb.

¹³⁷ See, e.g., MetroPCS Press Release, *MetroPCS Reports First Quarter 2009 Results: Industry Leading High-Growth, Low Cost Structure, Results in Record First Quarter Adjusted EBITDA* (May 7, 2009), *available at* <http://investor.metropcs.com/phoenix.zhtml?c=177745&p=irol-newsArticle&ID=1285538&highlight=> (reporting launch of unlimited service in the New York City and Boston metropolitan areas); MetroPCS Press Release, *Unlimited Wireless Carrier MetroPCS Expands Greater Philadelphia Coverage to Include Southern New Jersey Shore* (May 20, 2009), *available at* <http://investor.metropcs.com/phoenix.zhtml?c=177745&p=irol-newsArticle&ID=1290416&highlight=>; Leap Wireless Press Release, *Leap Brings Cricket Unlimited Wireless Services to Washington, D.C. and Baltimore* (June 23, 2009), *available at* http://phx.corporate-ir.net/phoenix.zhtml?c=191722&p=irol-newsArticle_Print&ID=1301347&highlight=; Cricket Press Release, *Cricket Extends Philadelphia Calling Area by Expanding into Trenton* (May 27, 2009), *available at* <http://www.mycricket.com/aboutcricket/pressroom/details?id=416>; U.S. Cellular Press Release, *U.S. Cellular Expands Network in Clarksville [Missouri]* (June 8, 2009), *available at* http://www.uscc.com/uscellular/SilverStream/Pages/x_page.html?p=a_press090608 (noting that U.S. Cellular “has led the effort to preserve federal support for rural wireless development”); Cellular South Press Release, *Cellular South to Expand Availability of Advanced 3G Mobile Broadband Services Throughout Much of Mississippi* (March 10, 2009), *available at* <https://www.cellularsouth.com/news/2009/20090310.html>; Bluegrass Cellular Press Release, *Bluegrass Cellular Announces Enhanced Voice and 3G Coverage in Grayson County [Kentucky]* (June 2, 2009), *available at* http://bluegrasscellular.com/about/news/bluegrass_cellular_announces_enhanced_voice_and_3g_coverage_in_grayson_coun.

¹³⁸ See, e.g., MetroPCS Press Release, *MetroPCS Is First North American Carrier to Offer Unlimited International Calling for \$5 per Month: Unlimited Plan Includes over 100 Countries and More Than 1,000 Destinations* (June 24, 2009), *available at* <http://investor.metropcs.com/phoenix.zhtml?c=177745&p=irol-newsArticle&ID=1285538&highlight=>; Leap Wireless Press Release, *Cricket Footprint Grows with Premium Extended Coverage, Forming Largest Roaming Coverage Area for a Low-Cost, Unlimited Carrier: Roaming Agreements with 14 Wireless Companies Expands Coverage from Coast to Coast* (Nov. 13, 2008), *available at* <http://phx.corporate-ir.net/phoenix.zhtml?c=95536&p=irol-newsArticle&ID=1226045&highlight=>.

satisfaction,¹⁴⁰ and they emphasize how well-positioned they are to grow and prosper in the future.¹⁴¹ This evidence permits only one conclusion: exclusive handset offers are promoting rather than harming competition.

B. The Commission Should Not Expand Automatic Roaming Requirements.

The Commission's automatic roaming rules require a wireless carrier to entertain a reasonable request to accommodate roaming on its voice network in areas where the requesting

¹³⁹ See, e.g., Leap Wireless Press Release, *Leap Reports Record Net Customer Additions of Nearly 500,000 for First Quarter 2009* (May 7, 2009), available at http://phx.corporate-ir.net/phoenix.zhtml?c=191722&p=irol-newsArticle_Print&ID=1286095&highlight= (noting that this was “more than double the number of net customer additions for the first quarter of 2008”); MetroPCS Press Release, *MetroPCS Reports First Quarter 2009 Results: Industry Leading High-Growth, Low Cost Structure, Results in Record First Quarter Adjusted EBITDA* (May 7, 2009), available at <http://investor.metropcs.com/phoenix.zhtml?c=177745&p=irol-newsArticle&ID=1285538&highlight=> (reporting first quarter 2009 net subscriber additions of approximately 684,000, the “highest quarterly net additions in company history,” which enabled the company to achieve “the 6 million subscriber milestone”).

¹⁴⁰ See, e.g., MetroPCS Press Release, *MetroPCS Reports Fourth Quarter and Year End 2008 Results* (Feb. 26, 2009), available at <http://investor.metropcs.com/phoenix.zhtml?c=177745&p=irol-newsArticle&ID=1260271&highlight=> (reporting that MetroPCS earned the highest ranking in the J.D. Power and Associates third annual Prepaid Customer Satisfaction Study); U.S. Cellular Press Release, *U.S. Cellular Tops J.D. Power And Associates Call Quality Ranking For The Seventh Consecutive Time* (March 20, 2009), available at http://www.uscc.com/uscellular/SilverStream/Pages/x_page.html?p=a_press090320_1; Cellular South Press Release, *Cellular South Rolls Out TV Ad Campaign Based On Nationwide Network Theme* (Feb. 2, 2009), available at <https://www.cellularsouth.com/news/2009/20090202.html> (company representative reporting that Cellular South has “one of the nation’s best networks in terms of quality, reliability and coverage and it’s obvious that [the company’s] customers wholeheartedly agree”).

¹⁴¹ See, e.g., Leap Wireless Press Release, *Leap Reports Record Net Customer Additions of Nearly 500,000 for First Quarter 2009* (May 7, 2009), available at http://phx.corporate-ir.net/phoenix.zhtml?c=191722&p=irol-newsArticle_Print&ID=1286095&highlight= (Leap’s president and CEO stating that “[g]iven the continuing strength of our operating business and success of our recent market launches, we believe that we are well positioned for future growth”); MetroPCS Annual Report 2008, *A Message From Chairman, President and Chief Executive Officer Roger D. Liguist*, at 5 (“we believe our strength in increasing penetration clearly demonstrates we are changing the marketplace . . . [w]e are proud of our strong subscriber growth, our low cost model, continued market innovation, and our improving Adjusted EBITDA margins”).

carrier lacks its own spectrum rights.¹⁴² That tracks closely with the market-based roaming solutions that had developed long before the Commission codified roaming rights. Some commenters nonetheless assert the Commission should vastly expand roaming entitlements, so that (1) automatic roaming would be available even within the areas in which the requesting carrier holds its own spectrum, and (2) automatic roaming would be available for wireless services that are not interconnected with the PSTN.¹⁴³ Although these specific issues are already the subject of a pending petition for reconsideration and further notice of proposed rulemaking, respectively, AT&T will briefly reiterate why the Commission should not adopt either of these proposals.

To begin with, history shows that appropriate market-based solutions always have and always will address legitimate roaming needs. Even before the Commission crafted automatic roaming regulations in 2007, AT&T already had reciprocal roaming agreements with the vast majority of GSM carriers in the United States, and the same is true today. AT&T also has reciprocal data roaming arrangements today for 2G services with many smaller GSM carriers that have deployed their own 2G data networks. The two types of roaming entitlements that these commenters want, however, are very different. In both cases, wireless providers that have chosen *not* to invest in their own networks are trying to free-ride on other competitors' investments while offering little or nothing in return. Thus, a Commission order requiring one-sided roaming agreements in these two instances would effectively force the facilities-based carrier to offer a resale service that would relieve the requesting provider of any need to invest

¹⁴² See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd. 15817, ¶¶ 23, 28 (2007) (“*Automatic Roaming Order*”).

¹⁴³ CFA Comments 28-30; Metro PCS Comments at 13-19; RTG Comments at 10-11; Cricket Comments at 6-8; BHN Comments at 9; Cellular South Comments 18-20; NTCA Comments at 3-4.

further in its own network. The Commission has already concluded that automatic roaming requirements in such instances would create severe disincentives for investment, and that judgment remains correct.

For example, with respect to home roaming, if a carrier already holds (or leases) wireless spectrum to serve a particular area, that carrier should be encouraged to *use* that spectrum to serve its customers. If a carrier could obtain automatic roaming throughout the area in which it already has spectrum, it is indisputable that the carrier would lose much of its incentive to make full use of its spectrum and build out its own network.¹⁴⁴ Moreover, a major source of competition between wireless carriers today is network coverage,¹⁴⁵ but if a carrier immediately lost its coverage advantage every time it invested in building out its network, then the original carrier would also have reduced incentives to build out or enter new areas.¹⁴⁶ That is why the Commission has already concluded that “if a carrier is allowed to ‘piggy back’ on the network coverage of a competing carrier in the same market, then *both* carriers lose the incentive to build-out into high cost areas in order to achieve superior network coverage.”¹⁴⁷ Consumers would then be severely “disadvantaged by a lack of product differentiation, lower network quality, reliability and coverage.”¹⁴⁸

Home roaming proponents’ contrary claim – that the lack of an automatic home roaming requirement somehow discourages build-out – is not credible. Indeed, these carriers should have no standing to claim that building out networks where they *already* hold spectrum is not viable.

¹⁴⁴ See Katz Decl. ¶ 61.

¹⁴⁵ *Eleventh Report* ¶ 133.

¹⁴⁶ See Katz Decl. ¶ 62.

¹⁴⁷ *Automatic Roaming Order* ¶ 49 (emphasis added).

¹⁴⁸ *Id.*

All of these carriers bid on and won those spectrum licenses on both the Commission's expectation and the carriers' representations that they would build out their networks. Moreover, prior to 2007, there was no automatic roaming requirement at all, anywhere, and yet these same carriers bid at spectrum auctions, acquired licenses, and entered numerous service areas. If these carriers had been willing to enter markets and build out prior to the imposition of any automatic roaming requirement at all, they cannot claim that entry or build-out where they have already bid on and hold spectrum would be deterred merely because there is a home market exception. Moreover, recent statements by these carriers further confirm that they do not require home roaming arrangements to effectively compete. The Chief Executive of MetroPCS, for example, recently explained that "[o]ur success and growth has never been hindered by our coverage."¹⁴⁹ Leap wireless has likewise downplayed the need for national coverage, stating that its customers "want quality coverage in their own city where they live, work and play."¹⁵⁰

Nor should the Commission extend automatic roaming to wireless services that are not interconnected with the PSTN. In fact, data roaming requirements would be unlawful. As the Commission has made clear, automatic roaming "is a common carrier service, subject to the protections of Sections 201 and 202." *Automatic Roaming Order* ¶ 23. Accordingly, when a common carrier, like a CMRS carrier, "offers automatic roaming, [that offer] triggers its common carrier obligations with respect to the provisioning of that service under the Communications Act," including the obligation to serve all potential customers "upon reasonable

¹⁴⁹ Roger Cheng, *MetroPCS, Leap Feel Pressure To Offer Nationwide Access*, Dow Jones Newswire (July 10, 2009), available at <http://www.nasdaq.com/aspx/stock-market-news-story.aspx?storyid=200907091520dowjonesdjonline000822&title=metropcsleap-feel-pressure-to-offer-nationwide-access>.

¹⁵⁰ *Id.*

request” on “reasonable and non-discriminatory terms and conditions” under Sections 201 and 202. *Id.* ¶ 26.

Wireless broadband data services, however, are information services, not common carrier services.¹⁵¹ As AT&T has previously explained, when a wireless broadband provider provisions data roaming, it necessarily provides information service functions above and beyond mere transmission, and therefore data roaming plainly meets the statutory definition of an information service.¹⁵² Moreover, the Commission has held that wireless broadband providers have no obligation to provide either the Internet service *or the underlying transmission standing alone* as a common carrier service.¹⁵³ Indeed, the Commission has uniformly held for all Internet service platforms – cable modem service, wireline broadband, wireless broadband, and electric power lines – that it would not perform “radical surgery” on such broadband services and force providers to carve out a common carrier transmission service. The Supreme Court has expressly affirmed these rulings. *See National Cable Telecommunications Ass’n v. Brand X Internet Services*, 545 U.S. 967 (2005).

For these reasons, although a wireless broadband provider may choose to offer data roaming on a private carriage basis – and as explained above, AT&T does have numerous data roaming agreements – such an offer does not (and could not) trigger any common carrier obligations, such as the obligation to serve all potential customers upon reasonable request,

¹⁵¹ *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, 22 FCC Rcd. 5901, ¶ 1 (2007) (“In this Declaratory Ruling, we find that wireless broadband Internet access service is an information service under the Communications Act of 1934”).

¹⁵² Reply Comments of AT&T Inc., *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, at 5-10 (November 28, 2007).

¹⁵³ *Id.* ¶ 32; *see also Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireline Facilities*, 20 FCC Rcd. 14853, ¶ 94 (2005).

because wireless broadband data services are not common carrier services. That is why the Commission has already held that automatic roaming, “as a common carrier service,” does not apply either to information services or to other wireless services that are not CMRS services.¹⁵⁴

Nor could the Commission impose such an obligation under Title I. To be sure, courts have acknowledged that the Commission retains some authority under Title I to impose certain types of obligations on information service providers. What is proposed here, however, is an obligation to “hold out” an offering of automatic data roaming “indifferently” to all comers – which is the very definition of common carriage.¹⁵⁵ The Supreme Court has squarely held that if the Act *expressly* carves out a set of services from common carrier regulation, the Commission cannot lawfully impose a common carriage obligation. *FCC v. Midwest Video Corp.*, 440 U.S. 689, 699-709 (1979). In *Midwest Video*, Section 3(h) of the Act provided that “a person engaged in . . . broadcasting shall not . . . be deemed a common carrier,” and therefore the Court struck down a Commission order imposing common-carrier-type access obligations on cable providers. *Id.*, 440 U.S. at 700-01 (access obligations violated statute because “[e]ffectively, the Commission has relegated cable systems, *pro tanto*, to common-carrier status”). The same would be true here: it is well-settled that services that fall within the statutory definition of an “information service” are not to be treated as common carrier services,¹⁵⁶ but an obligation to provide automatic data roaming “indifferently” to all would “effectively . . . relegate[e]” wireless

¹⁵⁴ *Automatic Roaming Order* ¶ 60.

¹⁵⁵ *NARUC v. FCC*, 525 F.2d 630, 641-642 (D.C. Cir. 1976) (Communications Act presumptively permits any communications provider to offer services on a private carriage basis unless it affirmatively undertakes to “hold out” its service to the public “indifferently” or is under a “legal compulsion” to do so).

¹⁵⁶ *Brand X*, 545 U.S. at 975 (“[t]he Act regulates telecommunications carriers, but not information-service providers, as common carriers”).

broadband providers – which are information service providers – to “common-carrier status” in violation of the Act.¹⁵⁷

The same result holds under Title III. As the Commission explained in the *Wireless Broadband Order*, Title III establishes a system for the allocation and licensing of spectrum, but that system is independent of the classification of the service using the spectrum. *Automatic Roaming Order* ¶ 36. Moreover, Title III expressly provides that the Commission may only “make such rules and regulations and prescribe such restrictions and conditions as may be necessary to carry out the provisions of the Act.”¹⁵⁸ The “provisions” of Title III make an express distinction between CMRS services, which are to be regulated as common carrier services, and other wireless services, which are not.¹⁵⁹ In the *Wireless Broadband Order*, the Commission held that wireless broadband services are not CMRS services. *Wireless Broadband Order* ¶¶ 37-56. Accordingly, Title III only *reinforces* the conclusion that the statute prohibits the imposition of common-carrier-type obligations on wireless service providers to the extent that they are not common carriers.¹⁶⁰

¹⁵⁷ Nor is there any basis in the record for finding that a lack of automatic data roaming is impacting competition for wireless voice services. No commenter has submitted any evidence that any carrier has acted unreasonably or that the fact that data roaming is subject to commercial negotiations (rather than mandatory) has in any way impeded competition. Indeed, as explained in Section II.A, *supra*, the smaller carriers that have raised this issue are doing extremely well and are confident of their future prospects.

¹⁵⁸ 47 U.S.C. § 303(r).

¹⁵⁹ 47 U.S.C. § 332(c).

¹⁶⁰ Because the statute expressly precludes imposing common carrier obligations on information services, the Commission could not justify such requirements either through conditions on licenses – because Title III conditions must “carry out,” not violate, the “provisions of the Act” – or through an assertion of “ancillary” jurisdiction – because, again, such measures cannot violate the statutory provisions to which they are “ancillary.” Indeed, at the time *Midwest Video* was decided, the Commission’s regulation of cable systems was purely a matter of “ancillary jurisdiction.”

In addition to being patently unlawful, there is no factual or policy case for new rules either. History has shown that voluntary negotiations will produce appropriate roaming agreements without the need for government mandates. Other than AT&T, few GSM carriers have deployed 3G networks. Accordingly, there has been no basis for AT&T to enter into reciprocal roaming arrangements for 3G data services (although, as noted, AT&T does have reciprocal roaming agreements for 2G data services). This situation will of course evolve over time – as other GSM carriers upgrade their networks to 3G (and ultimately 4G). Proponents of mandatory data roaming, however, seek something far more radical – they want carriers that have *not* made any investments in upgrading their networks to 3G (or made only token 3G upgrades) to have mandatory rights to roam on the networks of those that have. This sort of one-sided roaming essentially commits larger carriers to offer nationwide data resale services, and as the Commission itself has acknowledged, such easy access to data resale would strongly discourage investment in broadband infrastructure and network upgrades.¹⁶¹

In addition, mandatory data roaming – essentially forcing the largest carriers to serve all of their competitors’ customers – is, by any measure, quite premature. Data networks today are already under stress. Carriers like AT&T are already committing billions of dollars on capital expenditures to increase bandwidth, upgrade infrastructure, and acquire additional spectrum, all to meet rapidly increasing demands on data networks created by the exploding growth in wireless data services. AT&T and other carriers are making these multi-billion-dollar

¹⁶¹ Nor would a requirement that carrier be offering “some” 3G services to qualify for 3G roaming solve the reciprocity issue. A carrier could then build out in a very limited portion of its license area and demand immediate nationwide roaming on the AT&T network. Not only would such a rule strongly discourage investment in broadband infrastructure, it would provide a disincentive to be the first carrier to expand to an area as well. AT&T did not have the advantage of mandatory national data roaming when it risked its own capital to upgrade its network, and AT&T should have the right to compete on the product differentiation made possible by its own enormous investments in cutting-edge infrastructure.

expenditures to serve their *own* customers; creating additional, significant bandwidth demands on these carriers through an automatic data roaming requirement would place unreasonable burdens on such carriers and would threaten service quality for their own customers. Accordingly, the Commission at a minimum should postpone any action on automatic data roaming until it sees how these nascent data services continue to develop.

C. The Commission Should Not Reimpose Spectrum Limits.

RTG and CFA make perfunctory suggestions that the Commission should reverse years of pro-competitive spectrum policies and reimpose an arbitrary spectrum cap.¹⁶² These are transparent pleas to prevent an entire set of potential auction bidders and spectrum holders from participating in the spectrum market, in the hope that another set of bidders can obtain spectrum more cheaply against fewer bidders (and, in the process, ensuring that spectrum does not go to its highest and best uses and that the Treasury is deprived of the maximum potential revenue). The commenters in the pending proceeding concerning RTG's Petition for Rulemaking (RM No. 11498) have thoroughly refuted these claims, and they deserve no further consideration here.¹⁶³

The spectrum caps were imposed in a long-ago era when spectrum was far more scarce than it is today. Since 2003, when the Commission repealed the spectrum caps, the Commission has made large amounts of additional spectrum available (including 80 MHz of 700 MHz spectrum, 90 MHz of AWS spectrum, and 55.5 MHz of BRS spectrum, with another 30 MHz anticipated from the AWS-2 and AWS-3 spectrum). Consumers today demand more ubiquitous and reliable coverage, more speed and bandwidth for data, more advanced features and functionality, and more value, and elimination of the spectrum caps has allowed carriers to

¹⁶² RTG Comments at 6-7; CFA Comments at 23-24.

¹⁶³ See also Katz Decl. ¶¶ 68-69 (“a binding spectrum cap would distort and attenuate competition”).

expand their coverage, reduce their costs, and maximize their efficiency. As it relates to this competition report, these developments have *increased* competition (especially in rural areas), and the winners have been consumers, who have enjoyed better services at lower prices.

CFA's statement (at 24) that the elimination of the spectrum caps has allowed AT&T and Verizon to use their "purchasing power at spectrum auctions and ward off new entrants in CMRS markets" is baseless. The way clearly remains open for new competitors to gain spectrum and compete, as companies like Leap, Metro PCS, and Clearwire dramatically prove. Neither CFA nor RTG has ever provided any evidence that any carrier has been unable to obtain spectrum. The DOJ and the Commission deal with concerns about consolidation by examining acquisitions on a case-by-case basis and conditioning approval on divestitures where appropriate. But CFA's and RTG's bald assertions about "hyper-consolidation" and "ever fewer" competitors are belied by the facts that (1) there is enough spectrum today that caps are unnecessary, (2) there are scores of wireless competitors, and smaller carriers are among the fastest growing in the nation, (3) rural wireless customers remain served by three or more competitors in almost all cases, and (4) no carrier even remotely has a dominant position in the marketplace.

D. The Commission Should Not Reimpose Rate Regulation on Special Access.

Finally, in a proceeding devoted to *wireless* competition, Sprint devotes its comments entirely to its shopworn claims that AT&T and Verizon *wireline* services are not subject to effective competition.¹⁶⁴ Sprint's struggle to manufacture some connection between its special access complaints and some issue of relevance to this proceeding borders on incoherence. And the idea that the Commission could have any non-arbitrary basis for addressing longstanding industry disputes over the appropriate regulation of wireline special access services in a wireless

¹⁶⁴ Sprint Comments at 3-9; *see also* CFA Comments at 21-23.

proceeding that is entirely devoid of the enormous special access record that has been developed in the Commission docket devoted to special access issues is, frankly, absurd.

But this unfortunately has become par for the course for Sprint, because it recognizes that any serious inquiry into the special access marketplace facts will expose the falsity of its assertion that Verizon and AT&T face no competition for the business of supplying Sprint with wireless backhaul circuits. In reality, the existing record – and, notably, Sprint’s own public statements and actions – have already done so. As it relates to wireless services, Sprint’s myopic focus on DS1s is misplaced; with consumers already holding wireless devices capable of 3-10 Mbps, service providers will routinely require much greater backhaul speeds, which will require high capacity fiber or microwave transmission facilities – *not* the legacy, copper TDM-based DS1s and DS3s that consume Sprint’s attention. Seemingly everyone other than Sprint smells opportunity and is rushing in to build these facilities or expand their existing ones, including not only Sprint’s partner Clearwire but FiberTower, Level 3, the cable companies, and dozens of others.¹⁶⁵ In fact, as a Sprint officer recently admitted, the only reason microwave backhaul is not already more prevalent here is that market-based rates for DS1s from the ILECs are so cheap.¹⁶⁶ Sprint has never been forced in the past to buy backhaul circuits from AT&T or Verizon; when it has done so, it is because Sprint got a good deal, because as Sprint is quick to remind AT&T sales people (if not the Commission), it has lots of other choices.¹⁶⁷

¹⁶⁵ See Letter from James W. Cicconi, AT&T to Marlene H. Dortch, FCC, WC Docket No. 05-25, filed June 22, 2009, at 2-4.

¹⁶⁶ Stephen Lawson, *Sprint Picks Wireless backhaul for WiMAX*, The Industry Standard, July 9, 2008, available at <http://www.thestandard.com/news/2008/07/09/sprint-picks-wireless-backhaul-wimax> (Sprint CTO quoted as saying the reason microwave backhaul not as prevalent here as it is in the rest of the world is that “relatively abundant and *inexpensive* T-1s have stifled the technology here” (emphasis added)).

¹⁶⁷ AT&T 2007 Reply, Casto Supp. Reply Decl. ¶ 4; see also Verizon 2007 Reply at 16.

With each passing day, Sprint's assertions that special access competition is ineffective become increasingly indefensible, which explains Sprint's strategy of trying to keep the Commission from looking any further. Sprint vociferously objects to data requests that would force Sprint to disclose in detail its supplier options (and competitive carriers to disclose the proximity of their facilities and their willingness to serve Sprint). Incredibly, Sprint has also argued that the Commission must keep secret any data it does collect, denying such information even to outside attorneys under the sorts of protective orders the Commission has used countless times in similar circumstances.

Rather than confront the actual marketplace facts, Sprint simply parrots the same baseless arguments that have been discredited over and over again in the actual special access proceeding. For example, Sprint and CFA continue to tout the ILECs' supposed special access "rates of return" calculated from ARMIS data¹⁶⁸ – but the Commission has repeatedly rejected the use of service-specific rates of return using ARMIS data, even in this very context.¹⁶⁹ Even the NRRI's recent study for NARUC noted that "the RBOCs contend that the ARMIS figures are virtually meaningless," and concluded: "We agree with the RBOCs."¹⁷⁰ Sprint repeats the canard that

¹⁶⁸ Sprint Comments at 6 (claiming that AT&T and Verizon have earned "obscene profits" of over \$8 billion); CFA Comments at 22 (claiming that Verizon earned a 700% rate of return).

¹⁶⁹ Order And Notice Of Proposed Rulemaking, Special Access Rates for Price Cap Local Exchange Carriers, FCC 05-18, WC Docket No. 05-25, ¶ 129 (Jan. 31, 2005) ("Even if the Commission had enough data, moreover, we question [the] central reliance on accounting rate of return data to draw conclusions about market power. High or increasing rates of return calculated using regulatory cost assignments for special access services do not in themselves indicate the exercise of monopoly power"); Second Report & Order, *Policy and Rules Concerning Rates for Dominant Carriers*, 5 FCC Rcd. 6786, ¶ 380 (1990) ("the collection of rate of return data on an access category or rate element level is improper and unnecessary for price cap LECs"); Order on Reconsideration, *Policy and Rules Concerning Rates for Dominant Carriers*, 6 FCC Rcd. 2637, ¶ 199 (1991) (category-specific returns reported in ARMIS "do not serve a ratemaking purpose"). See also Katz Decl. ¶ 71.

¹⁷⁰ See Peter Bluhm & Robert Loube, National Regulatory Research Institute, *Competitive Issues in Special Access Markets*, at 70 (rev. ed. 2009).

special access prices are too high based on price comparisons with DSL services like Verizon's FiOS – never acknowledging that there are numerous differences between the two services and that Sprint is comparing the price of a one-mile-or-so DSL line with the price of a DS1 circuit encompassing two channel terminations and ten miles of transport.¹⁷¹ Sprint also repeats the falsehood that GAO and NRRI both found that the ILECs' have a "virtual monopoly," when in fact GAO found that it did not have enough data to make any such judgment (and hence the need for Sprint to stop stonewalling),¹⁷² and the NRRI study relying on data from non-ILEC sources confirmed that special access prices for lower-capacity DS1 and DS3 circuits declined substantially over the period studied (2006-07).¹⁷³

In short, the record in the special access proceeding overwhelmingly demonstrates that the Commission's special access and pricing flexibility policies, adopted during the Clinton administration, have been a resounding success. Those policies have brought customers lower prices and more choices just as the Commission predicted, and by allowing the market to set rates (rather than relying on government diktat, as Sprint advocates), the Commission's policies have promoted booming broadband investment. Sprint's endless rhetoric about the incumbents' supposed market power in special access is really just a company-specific plea for a government bailout financed by AT&T and Verizon. AT&T remains confident that any thoughtful

¹⁷¹ See Sprint at 5 & n.21; see also AT&T Response to Sprint, WC Docket No. 05-25, at 4 (filed Feb. 21, 2008). See also Katz Decl. ¶ 71.

¹⁷² Government Accountability Office, Report to the Chairman, Committee on Government Reform, House of Representatives, *FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services*, GAO-07-08, at 40 (Nov. 2006); see also *id.* at 50-52.

¹⁷³ See NRRI Report at 59 ("[d]ata in this table are the best estimate of actual prices paid by large wholesale purchasers because these customers purchase a high percentage of their circuits at discounted rates," and "[e]ach of the discounted rates we measured declined from 2006 to 2007").

consideration of competition in the special access marketplace – in the special access proceeding, of course – that focuses on competitive *facts* rather than just more rhetoric, will lead to a conclusion that special access is robustly competitive and that government-mandated rate reductions would do nothing but eliminate providers’ incentive to continue investing in vital upgrades in broadband infrastructure.

Of course, none of this has anything to do with the question in this proceeding, which is whether there is effective wireless competition. Sprint nowhere suggests that wireless competition is anything but intensely competitive. In fact, it concedes (at 7) that there is “intense competition among wireless carriers,” and Sprint has reiterated again and again in Commission proceedings and elsewhere that the wireless marketplace is extremely competitive.¹⁷⁴ Although Sprint claims that special access pricing somehow disadvantages Sprint vis-à-vis Verizon and AT&T, it provides no support whatever for that claim – indeed, Sprint pointedly does not contend that AT&T and Verizon are unreasonably discriminating in favor of their wireless affiliates in violation of Section 202 of the Communications Act.¹⁷⁵ Equally important, the suggestion that special access rates could impact the rate of 3G and 4G broadband deployment is particularly disingenuous given that Sprint has partnered with Clearwire to deploy a nationwide WiMAX network in which Clearwire has already said will rely almost entirely upon self-supply and other wireless solutions, not ILEC special access, for its backhaul needs.

Sprint’s own comments confirm that its special access campaign is really just a request for an unwarranted, government-provided windfall that Sprint would simply pocket. Sprint claims (at 7) that if AT&T and Verizon were to reduce their “profit levels” to the “FCC

¹⁷⁴ See, e.g., Sprint Handset Comments, RM-11497, at 5 (wireless marketplace is “competitive and producing innovation that benefits the public”).

¹⁷⁵ See Katz Decl. ¶ 71.

authorized return of 11.25%” for special access, “Sprint would realize an *annual* cost savings of \$790 million.” Sprint then asserts (*id.*) that “intense” competition in the wireless marketplace would “ensure” that special access price reductions would be passed on to consumers, *not* in the form of lower prices for wireless services, but “*e.g.*” through “accelerated network expansion to areas currently underserved or more rapid deployment of new technologies or services.” With that concession, however, the jig is up. The entire wireless industry – with the apparent exception of Sprint – is already investing heavily in upgrades to their wireless networks, and clearly they are able to make these investments without the government-mandated special access rate reductions Sprint advocates. In fact, Sprint is a notable anomaly in the industry in that its capital expenditures have been decreasing over the last two years as it struggles to overcome its own operational missteps.¹⁷⁶

It should be obvious, however, that artificially cutting ILEC special access rates would reduce the incentive for any company (Sprint included) to expand its networks; in fact, it would eliminate the returns that either incumbents or new entrants could expect from continuing the deployment of next generation infrastructure that our nation needs. The result would be a significant slow-down in wireline broadband infrastructure deployment, which is one the few sources of investment and jobs that has remained steady through the current economic crisis. The wireless marketplace is functioning extraordinarily well, and neither Sprint nor anyone else has identified any deficiency in *wireless* competition that would justify a Commission order simply handing Sprint a billion dollars a year in special access rate reductions.

¹⁷⁶ See Letter from James W. Cicconi, AT&T to Marlene H. Dortch, FCC, WC Docket No. 05-25, filed June 22, 2009, at 4-5 (it is “inarguable that Sprint is slashing infrastructure investment to meet short-term financial objectives even as it demands massive, government-mandated cuts in ILEC rates for legacy TDM-based DS1 and DS3 services”).

CONCLUSION

For the foregoing reasons, and for those stated in AT&T's initial comments, the Commission should reaffirm that wireless markets are intensely competitive and take the limited action to further reduce barriers to competition discussed herein.

Respectfully Submitted,

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